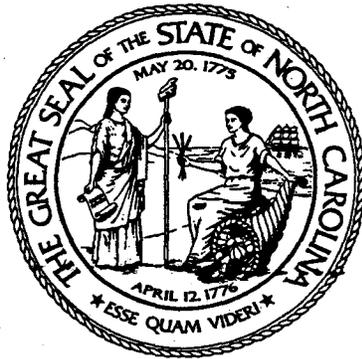
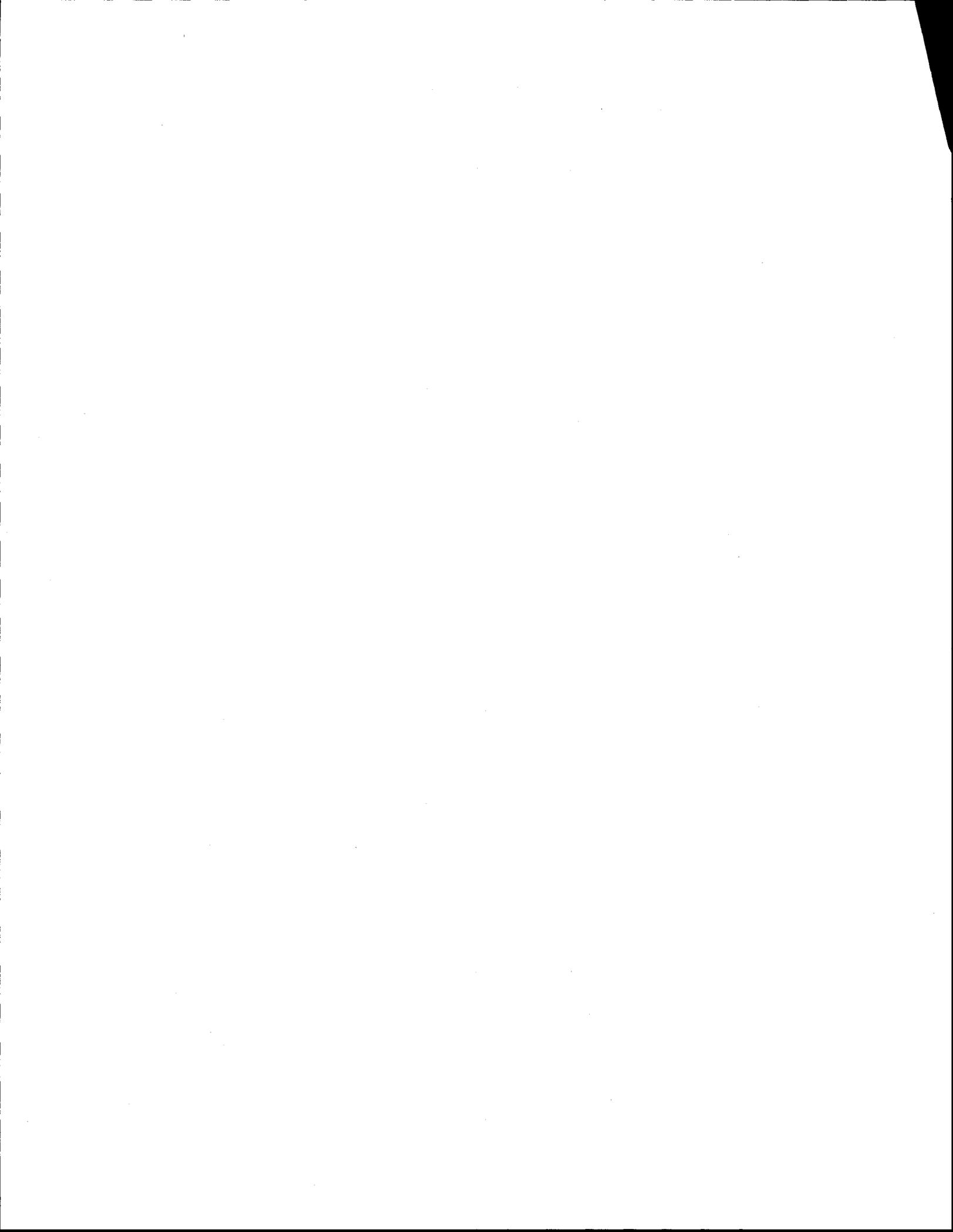


# NORTH CAROLINA COURTS COMMISSION



REPORT TO THE  
1995 GENERAL ASSEMBLY  
OF NORTH CAROLINA  
1996 REGULAR SESSION

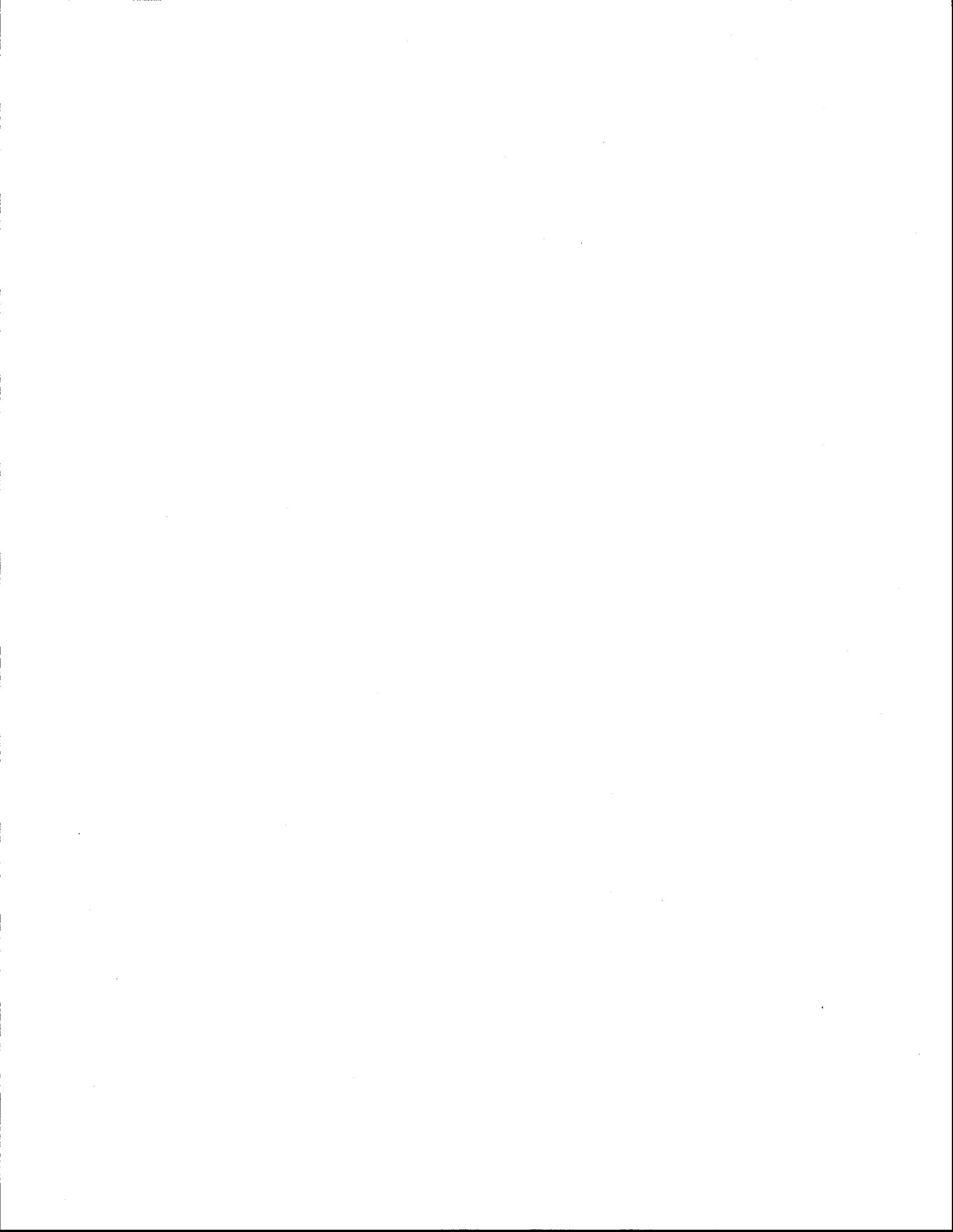


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North Carolina Courts Commission  
State Legislative Building  
Raleigh, North Carolina 27601-1096

ROBERT C. HUNTER, CHAIRMAN  
MARION, N.C.

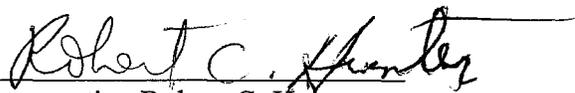
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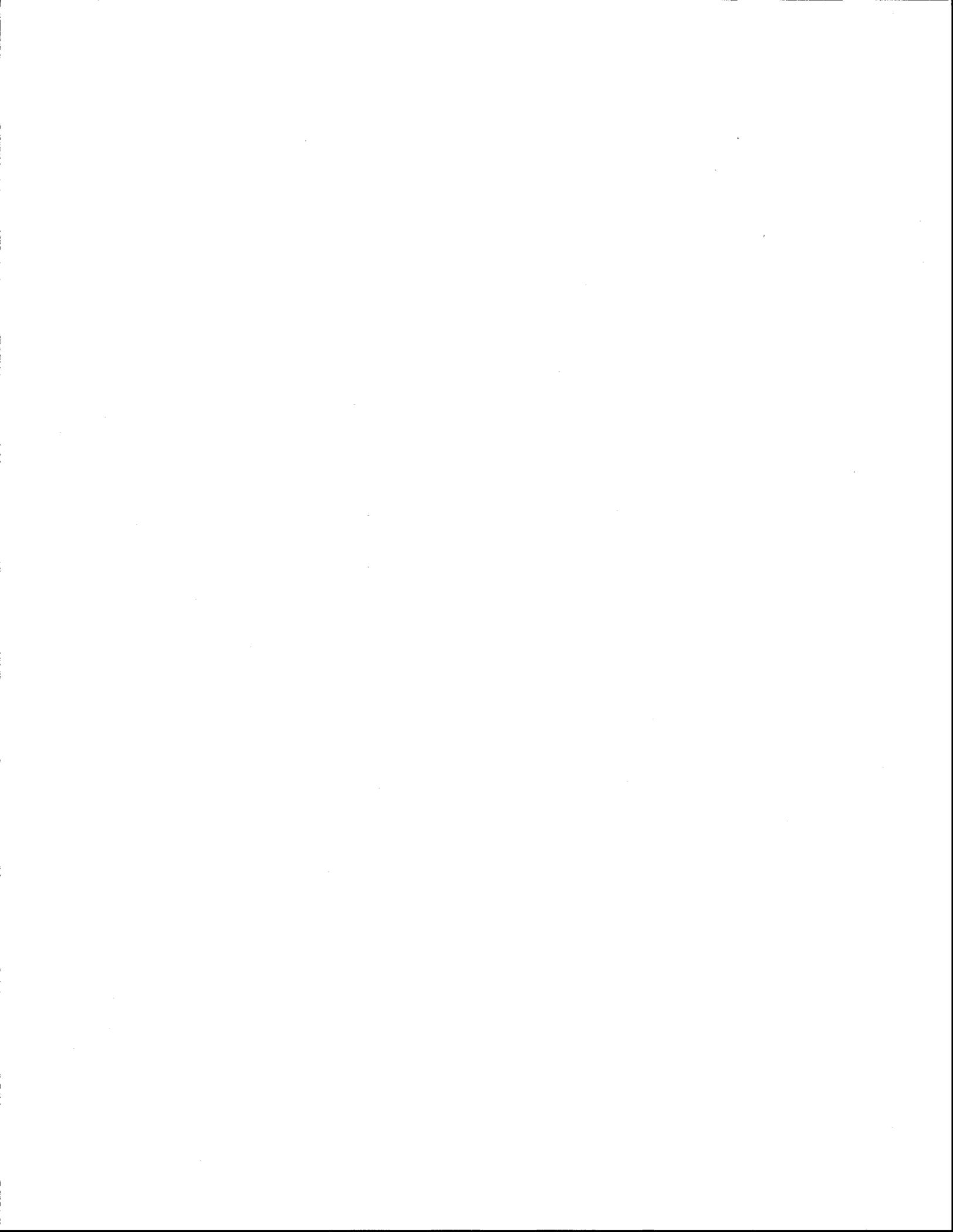
TO THE MEMBERS OF THE 1996 REGULAR SESSION OF THE 1995 GENERAL  
ASSEMBLY:

The North Carolina Courts Commission submits to you for your consideration its  
report. This report was prepared according to G.S. 7A-508.

Respectfully submitted,

  
Representative Robert C. Hunter

Chair  
North Carolina Courts Commission







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O. Legislative Proposal XII. A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT APPEAL BONDS ARE POSTED WITH THE CLERK OF THE APPELLATE COURT IN CONFORMANCE WITH THE NORTH CAROLINA RULES OF APPELLATE PROCEDURE AND TO CLARIFY THAT THE UNDERTAKING ON APPEAL MUST BE IN WRITING.

P. Legislative Proposal XIII. A BILL TO BE ENTITLED AN ACT TO MAKE CORRECTIONS TO THE STATUTES ESTABLISHING LIENS ON INSURANCE PROCEEDS TO SECURE CHILD SUPPORT.

Q. Legislative Proposal XIV. A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA COURTS COMMISSION.

## INTRODUCTION

The North Carolina Courts Commission, established by Article 40A of Chapter 7A of the General Statutes, is a permanent commission authorized to study the structure, organization, jurisdiction, procedures, and personnel of the Judicial Department and of the General Court of Justice. The 1995-96 chair of the Commission is Representative Robert C. Hunter.

Over the course of its deliberations, the Commission heard from a number of officials and individuals representing various groups and agencies. In his address to the Commission, Chief Justice Burley Mitchell said that there was a need to speed up and increase efficiency in trials. He suggested that the Commission look at the issues of jury trials, selection of magistrates, trial standards, appellate judges holding trial court, and a judicial building. He also suggested creation of two blue-ribbon committees to review the Rules of Civil Procedure and the criminal procedure laws with a mind to simplifying procedure and speeding up the trial of cases without sacrificing the quality of justice. Attorney General Michael Easley asked the Commission to look at how to implement the Victim's Rights Amendment, having district court judges take guilty pleas to "G", "H", "I", and "J" felonies, and authorizing grand jury subpoena power for investigation of public corruption.

Other suggestions received include the following: allowing the court to limit voir dire and to control jury argument; setting arraignment procedure by court rule rather than statute; changing the provision that only judges can set bond in domestic violence cases for the first 48 hours; making victim restitution more collectable; keeping the district attorney as the person responsible for managing criminal cases; eliminating misdemeanor appeals to superior court; re-evaluating judicial selection; using credit or debit cards or ATM machines to pay court costs; increasing the use of court mandated arbitration and mediation; allowing defendants to waive jury trials in Superior Court; upgrading the Case Information System; allowing remote access to court information; remove district attorneys from handling child support cases; clerks assign year's allowance; allowing court discretion to report district court civil trials; and allowing guilty pleas to be taken at arraignment stage or administrative court.

Some of these concerns are addressed in recommendations made by the Commission to the 1996 Regular Session of the 1995 General Assembly. Others need longer study and are currently being considered by the Commission's Subcommittee on the Structure of the Courts for recommendation to the 1997 General Assembly. Also, the Commission is aware that the Commission for the Future of Justice and the Courts in North Carolina has been developing a plan for the courts of the twenty-first century and is due to make its report to the General Assembly by December. In view of the Futures Commission's work, the Commission is reluctant to undertake significant structural changes to the judicial system before the Futures Commission makes its report.

The Commission is pleased to include, as an appendix to this report, the report of the Supreme Court of North Carolina on caseload management. In its recommendations to the 1995 Regular Session, the Courts Commission requested that the Supreme Court report to the General Assembly on this issue. Given the dramatic increase in caseloads in this State over the past decade, the Commission hopes that the

Supreme Court's report, and the recommendations included therein, will be instrumental in increasing the efficiency of our courts system.

## RECOMMENDATIONS OF THE NORTH CAROLINA COURTS COMMISSION

**RECOMMENDATION 1: The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ALLOW THE ENFORCEMENT OF RESTITUTION IN A CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF SUCH A JUDGMENT, AND TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN A CRIMINAL CASE." (Appendix D)**

In its report to the 1995 Regular Session, the Commission recommended similar legislation, House Bill 267, which is currently in the House Appropriations Subcommittee on Justice and Public Safety. In an effort to address concerns expressed during consideration of House Bill 267, the Commission created a Subcommittee on Restitution, which was chaired by Rep. Paul McCrary. The Subcommittee included representatives of the Victims Assistance Network, the clerks of court, judges, and the Administrative Office of the Courts. In its discussions, the Subcommittee was reminded of figures presented to the Courts Commission by Mr. Rob Lubitz of the Sentencing and Policy Advisory Commission. According to Mr. Lubitz, for every dollar of restitution ordered in 1990, only thirty-two cents had been collected by 1993. For defendants placed on probation, these numbers increased, but only to forty-three cents for every dollar ordered. Providing for the enforcement of restitution as a civil judgment will provide victims with an additional means to collect the damages owed to them. To ensure that victims have a greater opportunity to receive restitution, the Commission also recommends that, of the monies paid to the court by a defendant, restitution to the victim be disbursed first, before other costs, fines, and attorneys fees. Finally, to streamline execution of these judgments, the Commission recommends that the General Assembly create an exception to the statutory exemptions for execution of restitution orders. The Attorney General's Office has issued an opinion indicating that the creation of such an exception is constitutional.

**RECOMMENDATION 2: The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO DECREASE THE PERIOD OF TIME IN DOMESTIC VIOLENCE CASES THAT A DEFENDANT MAY BE HELD IN CUSTODY WITHOUT A DETERMINATION OF PRETRIAL RELEASE BY A JUDGE." (Appendix E)**

During the 1995 Regular Session, the General Assembly passed legislation amending G.S. 15A-534.1 to require a judge, not a magistrate, to determine the conditions of pretrial release and bail in domestic violence cases. If the judge does not act within 48 hours of the defendant's arrest, the magistrate may then make a determination of pretrial release. As noted by Judge Elizabeth Keever, President, Conference of District Court Judges, a district court judge is less aware of the specifics of a case than a magistrate who issued the warrant for arrest. The judge is therefore reluctant to make a determination of pretrial release, particularly over weekends and holidays when he or she cannot consult with other court personnel about the case. Also, in some rural areas of the State, it is often difficult to locate a judge on weekends or holidays. This has resulted in abuse of the statute. The complaining witness often requests a warrant over weekend periods, knowing that this will likely result in the defendant being held in custody for 48 hours. Recognizing that a "cooling-off" period

is often necessary in domestic violence case, but also hoping to lessen the chances of abuse of the statute, the Courts Commission recommends that the period during which a defendant may be held without a determination of pretrial release be decreased from 48 hours to 12 hours.

**RECOMMENDATION 3:** The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONTRACT WITH THIRD PARTIES TO PROVIDE REMOTE ELECTRONIC ACCESS TO COURT INFORMATION," (Appendix F), and also recommends that the Administrative Office of the Courts consider, in determining the amount to charge to commercial vendors, what costs may be included in its actual cost of providing a means of accessing court records to the vendors.

The Commission finds that public access to certain court information that is available through computerized court records is cumbersome. For example, to do a statewide criminal record check, a person must go to or contact every county in the state for that county to do a county check. Other information, although available from a central source, is not in a user-friendly format. The Administrative Office of the Courts would be able to use its computer information system more efficiently if there were fewer public demands on the system. There are commercial vendors who are willing and able to take the information that is in the court information system, add upgrades to put it in a more user-friendly format, and sell it to interested members of the public. Therefore, the Commission recommends that the General Assembly give the Director of the Administrative Office of the Courts the authority to contract with these vendors to provide remote electronic access to court information.

**RECOMMENDATION 4:** The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN DISTRICT AND SUPERIOR CIVIL COURTS AND TO MAKE CORRESPONDING CHANGES TO THE RULES OF CIVIL PROCEDURE AND NONBINDING ARBITRATION." (Appendix G).

There is a need to increase the amount in controversy for civil actions in district court. It has not been increased since 1982. During that same period of time, the General Assembly has increased the amount in controversy in small claims cases three times -- from \$1,000 to \$3,000. The Commission recommends that district court be the proper division for civil cases of \$25,000 or less and concomitantly recommends that the statewide court-ordered nonbinding arbitration program be used in cases where claims do not exceed \$25,000.

Senate Bill 257, Jurisdictional Amount Increase, which is in the Senate Appropriations Committee, was a recommendation of the Courts Commission to the 1995 General Assembly. The Commission recommends that Senate Bill 257 be ratified. If it is not eligible for consideration, the Commission recommends that this new legislation be ratified.

**RECOMMENDATION 5:** The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT

**TO ALLOW COMMUNITY PENALTIES PROGRAMS TO OBTAIN CRIMINAL RECORD CHECKS OF TARGETED OFFENDERS." (Appendix H)**

Local community penalties programs prepare community sentences to be used as an alternative to imprisonment for certain offenders. However, because the community penalties programs do not qualify as criminal justice agencies, the Federal Bureau of Investigation (FBI) does not allow the programs to obtain criminal record checks. The FBI will provide such checks to groups authorized by State statute to receive the information. Mr. Bob Atkinson, Administrator, Community Penalties Program, Administrative Office of the Courts, gave three reasons to grant the local programs access to such information: (1) public safety; (2) integrity of the programs' recommendations; and (3) efficiency. The Commission recommends legislation authorizing local community penalties programs to receive criminal record checks through the Department of Justice.

**RECOMMENDATION 6: The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A CIVIL TRIAL IN DISTRICT COURT WILL NOT BE REPORTED UNLESS A PARTY REQUESTS REPORTING IN WRITING OR THE COURT ORDERS REPORTING." (Appendix I).**

This statute may be interpreted, and has been interpreted, to read that all civil matters in district court must be recorded. With the elimination of district court reporters, this has become an additional burden for courtroom clerks. Therefore, the Commission recommends this legislation to amend G.S. 7A-198(d) to provide that civil matters will not be recorded unless a party requests recording or the trial judge, in the judge's discretion, orders reporting.

**RECOMMENDATION 7: The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSES' AND CHILDREN'S YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE." (Appendix J)**

In his presentation to the Commission, Mr. John Kennedy, Wake County Clerk of Court and Co-Chair, Clerks' Legislative Committee, asked that the Commission authorize clerks of court to approve a year's allowance from an decedent's estate for spouses and children. A year's allowance is an amount (\$10,000 for a spouse, \$2,000 for a child) given from the personal property of the deceased to the deceased's spouse or children for their support. Under current law, an application for year's allowance may only be approved by a magistrate. In the majority of cases, the clerk completes the necessary work on the year's allowance and is the proper person to approve the application. However, as noted by Mr. Kennedy, the option of using a magistrate should remain. Therefore, the Commission recommends that, in addition to the magistrate, a clerk of court be authorized to approve a year's allowance.

**RECOMMENDATION 8: The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN BOND FORFEITURE CASES." (Appendix K)**

Prior to the changes enacted by the General Assembly during the 1995 Regular Session, an order of forfeiture of bail was served first by the sheriff, and, if the sheriff could not complete service, was mailed by the clerk by regular mail. During the 1995 Regular Session, the General Assembly removed the requirement that the sheriff first attempt service of the order and provided that the clerk serve the order by certified mail. As explained to the Commission by the Clerks of Court Association, this requirement of certified mail notice results in increased costs for service and creates additional work for the clerks. Furthermore, notice by certified mail serves little or no purpose since, in most cases, the defendant cannot be located. As noted by the clerks, serving an order by certified mail to a defendant a bondsman cannot find is often a waste of time. The Commission recommends that the requirement to serve the order by certified mail be eliminated and replaced with service by first class mail.

**RECOMMENDATION 9:** The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE FILING AND REGISTRY OF CERTIFIED COPIES OF OUT-OF-STATE CUSTODY DECREES AND FOR THE VALIDATION OF CERTIFIED COPIES OF WILLS RECORDED WITHOUT PROBATE." (Appendix L).

Current law requires that exemplified copies of out-of-state custody decrees be filed in North Carolina in order to be enforced. However, many other states do not exemplify documents. The Commission therefore recommends that G.S. 50A-15 and G.S. 50A-16 be amended to allow filing and registry of certified copies of out-of-state custody decrees.

Likewise, under G.S. 31-30, only exemplified copies of wills recorded without probate may be validated. The Commission recommends that this statute be amended to allow certified copies to be validated as well.

**RECOMMENDATION 10:** The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO RAISE THE FORECLOSURE FILING FEES." (Appendix M).

The Commission recommends that the foreclosure filing fee be raised from \$25.00 to \$30.00 and that there be a minimum \$10.00 fee for each sale completed.

**RECOMMENDATION 11:** The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND THE GOVERNOR'S CRIME COMMISSION." (Appendix N)

Membership on the Sentencing and Policy Advisory Commission, the Criminal Justice Advisory Board, and the Governor's Crime Commission includes representatives of various segments of law enforcement and the courts. As noted by Mr. John Kennedy, Wake County Clerk of Court and Co-Chair, Clerks' Legislative Committee, through their court responsibilities, the clerks are consistently involved with criminal issues and should be represented on these Commissions. The Courts Commission

recommends that the authorizing legislation of these Commissions be amended to provide for membership by a representative of the clerks of court.

**RECOMMENDATION 12: The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT APPEAL BONDS ARE POSTED WITH THE CLERK OF THE APPELLATE COURT IN CONFORMANCE WITH THE NORTH CAROLINA RULES OF APPELLATE PROCEDURE AND TO CLARIFY THAT THE UNDERTAKING ON APPEAL MUST BE IN WRITING." (Appendix O)**

Ms. Jo Kittner, Director, Governmental Affairs, North Carolina Bar Association (NCBA) presented the Commission with a request from the NCBA to recommend legislation clarifying the method of posting an appeal bond. Prior to 1980, both surety and cash appeal bonds were posted with the clerk of superior court. In 1980, the North Carolina Supreme Court amended Rule 6 of the North Carolina Rules of Appellate Procedure to provide that cash appeal bonds must be posted with the clerk of the appellate court. However, G.S. 1-285 was not amended to reflect this change and remains in conflict with the Rules of Appellate Procedure. The Commission recommends that G.S. 1-285 be brought into conformance with the Rules of Appellate Procedure. The Commission also recommends that G.S. 1-286 be amended to clarify that the surety bond must be in writing, as required in G.S. 1-285.

**RECOMMENDATION 13: The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO MAKE CORRECTIONS TO THE STATUTES ESTABLISHING LIENS ON INSURANCE PROCEEDS TO SECURE CHILD SUPPORT." (Appendix P)**

During the 1995 Regular Session, the General Assembly enacted House Bill 168, Child Support Changes, which included a provision, G.S. 44-49.1, authorizing the Department of Human Resources or a child support obligee to place a lien on the insurance proceeds of an absent parent who owes child support. The lien provision refers to contracts of insurance issued "pursuant to this Chapter." However, contracts of insurance are not issued under Chapter 44. This reference should, instead, be to insurance contracts issued "pursuant to Chapter 58." Furthermore, the newly enacted statute would include a lien on health insurance proceeds to be paid to health care providers. This was not the intent of the statute and language is needed excluding accident and health insurance from the child support lien. Finally, the child support lien was not intended to interfere with a medical providers lien under G.S. 44-50 on funds paid to an injured person for settlement of a personal injury claim. The Commission recommends legislation correcting these provisions and recommends that G.S. 44-49.1, which creates the child support lien, be recodified in a new Article 8A as G.S. 44-48.1.

**RECOMMENDATION 14: The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA COURTS COMMISSION." (Appendix Q)**

The Commission finds that it would be assist the work of the Commission to have several Commission members who are non-lawyers and who are not officers or employees of the Judicial Department. The Commission also finds that the ex officio

members who represent the State Bar and the Bar Association should be made voting members of the Commission.

**RECOMMENDATION 15:** The Commission recommends that the 1996 Regular Session of the 1995 General Assembly enact House Bill 268, Conform Witness Travel Fees.

Before 1971, G.S. 7A-314 made no distinction in mileage reimbursement between in-state and out-of-state witnesses, as all witnesses were reimbursed at the same rate as State employees. Since then the mileage rate has been increased for State employees, and by extension, in-state witnesses. By inadvertence, the out-of-state witness rate had not increased accordingly. The Commission recommends that the 1996 Regular Session enact House Bill 268, Conform Witness Travel Fees, to return the rate of reimbursement for out-of-state witnesses who testify in North Carolina cases to a rate equivalent to that paid to in-state witnesses and State employees. House Bill 268, which was a recommendation of the Courts Commission to the 1995 General Assembly, is in the Senate Appropriations Committee.

**RECOMMENDATION 16:** The Commission recommends that the Administrative Office of the Courts undertake a juror opinion survey and a study to determine how jurors are actually being used. The Commission recommends that legislation be introduced in the 1996 Regular Session of the 1995 General Assembly to appropriate \$40,000 to fund this study unless the Administrative Office of the Courts can secure funds from another source.

In reviewing changes in jury voir dire and argument recommended by the North Carolina Judicial Conference, testimony from persons regularly involved in the judicial system is available, but information about jury service is not available from those who have served as jurors in North Carolina. In order to properly determine whether changes to the current system of selecting and using jurors are needed, information regarding how jurors feel they were treated when on jury service, their opinions about the judicial system after jury service, and how people summoned for jury duty are being used is crucial. The Commission recommends that the Administrative Office of the Courts gather this information in a systematic and professional manner and recommends legislation to appropriate funds to carry out this study unless the Administrative Office can secure funds from another source.

## COMMISSION PROCEEDINGS

October 13, 1995

Representative Robert C. Hunter, Chair of the Commission, began the meeting by welcoming all members and staff and recognizing new Commission members appointed following the 1995 Regular Session of the General Assembly. Mr. Michael Crowell, Executive Director of the Commission for the Future of Justice and the Courts, briefed the Commission on the work of the Futures Commission, which is doing a two-year study of North Carolina's judicial system and will make recommendations to the state Supreme Court later in the year. Of concern to Mr. Crowell was a statewide poll reflecting public discontent with the courts, particularly with a perceived leniency by the courts on criminals. Mr. Crowell mentioned several areas to be addressed by the Futures Commission, including a single level trial court, creation of family courts, judicial selection, and the role of the Chief Justice in the court system.

Ms. Lynn Marshbanks, Commission Counsel, provided the members with an overview of the status of legislation recommended by the Commission to the 1995 Regular Session of the General Assembly. Rep. Hunter indicated that the Commission would discuss for possible re-recommendation any Commission bills which were not ratified by the General Assembly, including House Bill 267 -- Restitution/Civil Judgment. Rep. Hunter also appointed a Subcommittee on Restitution to consider possible changes to House Bill 267.

Mr. Pete Powell, Counsel to the Administrative Office of the Courts, spoke to the Commission about actions by the Chief Justice to address case backlogs in the court system. From April 1995 to June 1995, the Chief Justice ordered all superior court judges to assess the state of affairs in each of their districts. Since January 1, 1995, pending felony caseloads dropped 14% and pending misdemeanor caseloads fell 16% in the State. The Cumberland County Case Management System, which features extraordinary cooperation between the senior resident superior court judge, the district attorney, and the trial court administrator, produced particularly dramatic results in that county.

Mr. Jim Drennan, former Director of the Administrative Office of the Courts (AOC) and Commission Counsel, gave a summary of the 1995 budget of the Judicial Department approved by the 1995 Regular Session of the General Assembly. A memorandum detailing Judicial Department budget cuts was distributed to Commission members. Mr. Drennan also told the Commission that the AOC wants to provide remote access to public information in the Court Information System. Rep. Hunter appointed a Subcommittee on Computer Access, chaired by Rep. William Culpepper, to consider this issue.

November 9, 1995

The Honorable Burley B. Mitchell, Jr., Chief Justice of the North Carolina Supreme Court, addressed the Commission. He stated that one way to increase court efficiency without sacrificing the quality of justice would be revisions of the Rules of Civil Procedure and the Rules of Criminal Procedure. He suggested that a legislative commission or blue-ribbon study commission appointed by the Chief Justice should study the Rules. He also listed several issues that the Courts Commission might want to study: (1) the jury system; (2) the selection of magistrates; (3) trial standards; (4) appellate judges presiding over trials; (5) money for the Judicial Branch; and (6) new building space for the appellate courts and the Administrative Office of the Courts.

The Honorable Forrest A. Ferrell spoke on behalf of the North Carolina Conference of Superior Court Judges. He asked the Commission to consider the following recommendations of the Conference: (1) an amendment to G.S. 84-24 to give trial judges increased control over closing arguments; (2) a review of Chapter 15A -- Criminal Procedure Act to expedite criminal trials; (3) an amendment to G.S. 15A-1214 to authorize the trial judge to inquire of prospective jurors' competency and limit questions of counsel to prospective jurors; and (4) an amendment to G.S. 15A-1343 to authorize the Chief Justice to decide procedures for calendaring of arraignment sessions. Rep. Hunter assigned the Conference's recommendations to the Subcommittee on Structure of the Courts, chaired by Mr. Wade Barber.

Judge Ferrell asked that Rep. Hunter recognize Judge Robert Lewis of Asheville for comments. Judge Lewis requested the Commission to examine recent legislation ratified by the General Assembly providing that only a judge may set bonds in a domestic violence case during the first 48 hours of incarceration. Judge Lewis indicated that the new law places a hardship on judges and should be changed.

Mr. Robin L. Lubitz, North Carolina Sentencing and Policy Advisory Commission, presented recommendations from the Sentencing Commission for improvement of restitution collection. According to Mr. Lubitz, for every dollar of restitution ordered in 1990, thirty-two cents had been collected by 1993. For defendants placed on probation, these numbers increased to forty-three cents for every dollar of restitution ordered. Recommendations of the Sentencing Commission included providing improved information to the judge regarding the amount of the victim's loss and the defendant's ability to pay, placing payment of restitution before payment of other fines and costs, payment of restitution by credit or debit cards, and extending the maximum period of probation from eight years to ten years.

Mr. Sam Boyd, Administrator of the Parole Commission, provided an update on the Courts Commission's recommendation to the 1995 General Assembly that the practice of paroling and terminating individuals who owe restitution be eliminated. Mr. Boyd indicated that the practice of paroling and terminating individuals who owe restitution is now very rare. During the first four months of 1995, only thirty-seven people were paroled and terminated who may have been able to pay restitution.

December 15, 1995

The Honorable W. Douglas Albright, President of the North Carolina Conference of Superior Court Judges, requested that, in addition to the Conference's recommendations presented by Judge Forrest Ferrell at the Commission's November meeting, the Commission examine the issue of restructuring misdemeanor appeals. He also encouraged the Commission to look at judicial selection and do all possible to help keep the judiciary from becoming politicized. Rep. Hunter assigned this issue to the Subcommittee on Structure of the Courts.

The Honorable John W. Smith, former President of the North Carolina Conference of District Court Judges spoke on behalf of the Conference. He made many recommendations to the Commission for study. Some of those recommendations were: (1) family court; (2) child support hearing officers to hear noncontested cases; (3) easier pro se litigation; (4) appointment of judges with voter retention; (5) return of indigency screeners; (6) education program for separating couples with children; (7) six-person juries trying appealed misdemeanors in district court; (8) automated teller machine in courthouse; and (9) laptop computers for judges.

Mr. Peter Gilchrist, President of the North Carolina Conference of District Attorneys, presented the concerns and recommendations of the Conference of District Attorneys. Mr. Gilchrist spoke of a desperate need to upgrade the Case Information System. He also indicated that, given the increase in cases resolved by guilty pleas, district attorneys and judges must agree on a method to allow such pleas at arraignment calendars or administrative courts, rather than being placed on the trial calendar.

Mr. Wayne Harris, Supervisor of the Victims Compensation Fund, applauded the Commission and the General Assembly for listening last year to the needs of the Fund and voting to increase its appropriations. The average number of weeks between approval of a claim and payment is now two weeks as compared to six to eight months a year ago. Mr. Harris also explained the process by which any victim may call and learn the status of his or her claim by telephone.

January 19, 1996

After opening remarks by Rep. Hunter, the Honorable S. Gerald Arnold, Chief Judge of the N.C. Court of Appeals, addressed the Commission. He spoke of the increasing volume of work for the Court of Appeals. Rather than hiring more judges to handle the increased workload, Judge Arnold indicated that an additional two staff attorneys for the Court would adequately aid in the disposition of cases.

Judge Jack Cozort, Director of the Administrative Office of the Courts, presented a status report on the short and long term plans for the courts. Of the court system's \$280 million dollar budget, approximately \$250 million is an appropriation from the General Fund, which is less than 3% of the State's budget. In fiscal year 1994-95, the court system collected a total of \$895 million, of which \$400 million was for alimony and child support. With reference to caseloads, Judge Cozort noted that, due to the increased disposal of cases in superior court, pending felony cases decreased 14% as of December 31, 1995. Given the increased movement of cases in superior court, funds for indigent counsel are a bigger problem than in previous years and, according to Judge Cozort, these funds will run out before the end of the fiscal year. He closed with a status report on various programs including the financial management system,

community penalties programs, requisition and inventory system, criminal case management programs, computer linkage of forms statewide, drug treatment courts, alternative dispute resolution programs, mediated settlement conferences, computer and facilities upgrades, and records management.

Mr. David Reavis, Deputy Director, Banking Operations, Department of State Treasurer, reported to the Commission on the possible use of credit cards by the courts for collection of fees, costs, child support, etc. Mr. Reavis informed the Commission that currently credit cards are used by state agencies for a variety of purposes, including university book store sales, tuition payments, hunting licenses, motorboat registration renewals, gift shop sales, and DOT ferry ticket sales. Mr. Reavis indicated that since credit card companies will not allow a surcharge to be leveled against their card holders to cover the companies' transaction fees, a small percentage of each fee, cost, child support, etc. would have to go to the credit card company. Authorization would be needed for the courts to remit this percentage to the credit card companies, rather than to the General Fund or individual payees. An alternative would be for the State to appropriate money to cover the credit card fees.

Following Mr. Reavis' comments, the Commission voted to recommend two pieces of proposed legislation entitled Conform Witness Travel Fees and Jurisdictional Amounts Increase to the 1996 Regular Session. The Commission had previously recommended both bills to the 1995 Regular Session.

**February 23, 1996**

The Honorable Michael F. Easley, Attorney General of North Carolina, told the Commission that there were four actions that he would like for the Commission to take: (1) recommend legislation needed to implement the victims' rights amendment if the proposed amendment is ratified in November; (2) support pending legislation that would allow a district court judge, with the consent of the prosecutor and the superior court judge, to take guilty pleas on certain felonies, and consider whether Class G felonies should be included in those; (3) supporting pending legislation that would allow for photographing, fingerprinting, DNA analysis, and sharing of confidential records on juveniles where a violent crime is involved; and (4) recommending subpoena power for law enforcement in investigations of white-collar crimes.

Two district court judges spoke on the issue of bond procedures in domestic violence cases: The Honorable Elizabeth Keever, President of the Conference of District Court Judges, and The Honorable Ann Salisbury, Wake County District Court. New legislation from the 1995 Regular Session provided that in domestic violence cases, a judge must determine the conditions of pretrial release. If that determination is not made within 48 hours of arrest, a magistrate must act.

Judge Keever told the Commission that the new language was not helpful, because in many rural counties no judge is available and the defendant stays in jail for 48 hours. She said that magistrates have the information and ability to make decisions in domestic violence cases, just as they do in other cases concerning violence. Judge Salisbury emphasized that magistrates, especially in rural counties, have the opportunity to see the victim as well as get information from the arresting officer. In response to their comments, Senator Odom suggested that there are strong feelings from different advocacy groups and that magistrates, district attorneys, and representatives from advocacy groups should meet to try to make further recommendations. Rep. Hunter

stated that anyone who is interested in commenting on this issue should contact him or one of the Commission staff.

The following speakers addressed the issue of the use of cash bonds and forfeiture of bonds: Judge Keever; Judge Salisbury; Mr. Peter Gilchrist, District Attorney of Mecklenburg County and President of the Conference of District Attorneys; and Mr. Mark Black, N.C. Bail Agents Association. During the 1995 Regular Session, the law on cash bonds and forfeiture was changed in several ways: (1) to provide that a bond issued by a surety bondsman is considered the same as cash, with an exception for cash bonds set in child support contempt proceedings; (2) to provide that service be made by the clerk by use of certified mail, rather than by the sheriff, then by regular mail; and (3) to require that the order of forfeiture be set aside in three specific situations.

Judge Keever and Judge Salisbury said that they wanted the discretion to require cash bonds in lieu of surety bonds, because cash bonds are useful and give an option to ensure appearance as well as ensure that there is money available to cover expenses. Mr. Gilchrist agreed with the judges, and he stressed the importance to district attorneys of knowing that the defendant will appear. Mr. Gilchrist suggested that several changes be made in the forfeiture statute. Mr. Jim Kelly, Vice President of Professional Bail Agents of the United States, also had comments on the responsibilities of bondsmen to ensure the appearance of defendants in court. Rep. Chuck Neely suggested that changes to the statutes were needed and that a subcommittee should look at the issue. Rep. Hunter agreed with that, if a subcommittee could meet and make suggestions before the short session.

The following speakers addressed the issue of taking district attorneys out of UIFSA (Uniform Family Support Act) cases and having child support enforcement handle them like other support cases: Mr. Mike Adams, Department of Human Resources, Assistant Director, Child Support Enforcement; Judge Keever; Mr. Peter Gilchrist; and Ms. Patrice Rossler, Association of County Commissioners.

Mr. Adams explained how the current child support enforcement system works. In around 60 counties, the attorney who works with the IV-D agency handles the IV-D cases. In the other counties, the district attorney handles those cases. He explained that any change in responsibilities would have to consider funding issues for counties and for the State. Mr. Adams and Mr. Gilchrist agreed that Mr. Adams' office has access to information that would enable that office to do a better job in handling child support cases. Ms. Rossler said that the Association of County Commissioners agreed with the concept that Child Support Enforcement should handle IV-D cases. However, there is not yet a cost estimate for shifting the responsibilities.

Mr. John Kennedy, Wake County Clerk of Court and Co-Chair of the Clerks' Legislative Committee, presented some suggested statutory changes from the Clerks of Court. They were to: (1) eliminate lockbox inventories; (2) allow an employee of the clerk's office to approve a year's allowance for a spouse; (3) allow a certified true copy of an out of state custody decree to be recorded in this state; (4) place clerks of courts on various commissions; (5) allow a higher fee for tapes of court proceedings; (6) give a trial judge discretion to order district court civil matters not to be recorded; (7) eliminate the requirement of certified mail notice in bond forfeiture matters; and (8) raise the foreclosure fees. The Commission asked Commission counsel to draft legislation for recommendation to the 1996 Regular Session of the 1995 General Assembly on all of these, except for numbers (1) and (5). The Commission asked that in the legislation concerning certified true copies, they be allowed everywhere in the

statutes where exemplified copies are required. The Commission also asked that in the legislation concerning discretion to record, reporting take place if a party requests it. The Commission asked that the Administrative Office of the Courts make a recommendation on whether the fee for tapes of court proceedings should be raised.

**March 22, 1996**

Ms. Jeanne Bonds, Public Information Officer for the Administrative Office of the Courts (AOC), provided the Commission with a status report on various programs being implemented across North Carolina by the AOC. Rep. Hunter suggested that the Commission might make some recommendation to support expansion of arbitration. Also, he suggested that the Commission could recommend additional funding to accelerate the implementation of the child custody and visitation mediation program. Finally, he asked that the AOC report to the Commission on how to measure the quality of representation in the District Court Indigent Defense Fee Schedule Pilot Project and on whether the Commission should request funding for indigency screeners.

Ms. Jo Kittner, Director of Governmental Affairs for the North Carolina Bar Association, provided Commission members with a proposed statutory change that would conform G.S. 1-285 and 1-286 to Rule 6 of the Rules of Appellate Procedure by allowing an appellant to post a surety bond with the clerk of the appellate court in compliance with the Rules of Appellate Procedure. The Commission voted to recommend this change to the 1996 Regular Session.

Mr. Barry Miller, Child Support Enforcement, Department of Human Resources, gave the Commission information on what it would cost the State and 43 counties to transfer the responsibility for child support cases from the district attorneys to IV-D attorneys in those counties. Commission members expressed concern for the 57 counties that had already absorbed those costs and suggested that the State should pick up the costs to those counties. Mr. Jim Mills of the Fiscal Research Division commented that the information in the handout covered only the 43 counties that had not transferred the responsibility for child support cases from district attorneys to IV-D attorneys. He said he could develop total cost figures for all 100 counties for the Commission to examine after the short session.

Mr. Jim Blackburn, N.C. Association of County Commissioners, addressed the issue of jail fees. He said that the Association had favored increasing jail fees, but they did not have a specific figure and had not decided whether the fee should be mandatory.

**April 12, 1996**

The meeting began with reports from two of the Commission's subcommittees. Rep. Hunter recognized Rep. William Culpepper, Chair, Subcommittee on Computer Access, to present the Subcommittee's report to the Commission. Proposed legislation submitted by the Subcommittee would authorize the Director of the Administrative Office of the Courts to enter into contracts with companies to provide electronic access to court records for the public. The companies will reimburse the AOC for its costs in providing the records. Records that are by law not available to the public are not included in the legislation. The Commission voted to recommend the legislation to the 1996 Regular Session.

Rep. Paul McCrary, Chair, Subcommittee on Restitution, presented the Subcommittee's proposed legislation. Under the proposed legislation, restitution would become a civil judgment when the conviction becomes final or, if probation is ordered, when probation is terminated or revoked. For these orders, the legislation contains an exception to the statutory exemptions from execution. The bill also changes the priority for disbursement of funds in a criminal case. Restitution would be moved from fourth to first and be paid before other fines, costs, or fees. Ms. Catherine Smith, N.C. Victims' Assistance Network expressed her appreciation for the Subcommittee's efforts. Mr. John Kennedy, Clerk of Superior Court, Wake County, asked that the proposed legislation include notification by the trial judge to the clerk of the judgment and its amount. Rep. Hunter asked Commission staff to have language prepared at the next Commission meeting to address Mr. Kennedy's concerns. Pending adoption of the new language, the Commission voted to recommend the legislation to the 1996 Regular Session.

Mr. Pete Powell, Counsel, Administrative Office of the Courts (AOC), presented the Commission with information on the effects of eliminating indigency screeners. At the time the positions were eliminated, seven counties had indigency screeners. Since elimination of the positions, courtroom clerks or pre-trial release personnel have handled preparation of the affidavits of indigency. Mr. Powell indicated that the AOC has no statistics to prove or disprove the program's effectiveness and, therefore, is unable to make a recommendation to the Commission.

Rep. Hunter recognized Commission Counsels, Mr. Tim Hovis and Ms. Lynn Marshbanks, to present legislation requested by the Clerks of Court Association and approved by the Commission at its meeting on February 23, 1996. Drafts of the proposed legislation entitled Years Allowance for Spouse, Exemplified Copy to Certified Copy, Clerks on Various Commissions, Discretion to Record, Eliminate Certified Notice in Forfeitures, and Foreclosure Fees were presented and explained by the Commission staff. After discussion of each draft and subsequent changes, the Commission voted to recommend the legislation to the 1996 General Assembly.

Judge Jack Cozort, Director, Administrative Office of the Courts, provided Commission members with a proposed bill to allow local community penalties programs to obtain criminal record checks through the State Attorney General's Office and the Federal Bureau of Investigation. After discussion and modification of the proposal, the Commission voted to recommend the legislation to the 1996 Regular Session.

Before adjourning the meeting, Rep. Hunter asked Commission members for their thoughts on recent changes by the legislature to G.S. 15A-534.1, Crimes of domestic violence; bail and pretrial release. The amendments, passed during the 1995 Regular Session, require bail in domestic violence cases to be set by a judge during the first 48 hours of incarceration. As noted by previous speakers at the Commission's November and February meetings, these changes have resulted in numerous defendants remaining in jail during the 48 hour period because a judge was either not called or was unavailable. Rep. Hunter appointed a Subcommittee on 48 Hour Hold/Domestic Violence to meet and make recommendations to the Commission on this matter.

May 10, 1996

Rep. Hunter reviewed the legislation that the Commission had voted to recommend at previous meetings, and Commission Counsel informed Commission members of changes in the bills.

Mr. Tim Hovis, Commission Counsel, explained a proposed recommendation concerning child support liens. During the 1995 Regular Session, the General Assembly enacted legislation authorizing the Department of Human Resources or a child support obligee to put a lien on the insurance proceeds of an absent parent who owes child support. Mr. Hovis explained that there were inaccuracies in that law that need to be corrected. The Commission voted to recommend a bill to the 1996 Regular Session to address these problems.

Mr. Wade Barber, Chair of the Subcommittee on Structure of the Courts, presented to the Commission that subcommittee's recommendation that the Administrative Office of the Courts seek a grant to fund a survey of juror's opinions. The Commission voted to make the recommendation that the AOC seek that grant if the AOC thinks it is fairly certain to get the grant, and if it is not, the Commission will recommend legislation appropriating money for the AOC to conduct the survey.

The Subcommittee on 48-Hour Hold/Domestic Violence Cases reported to the Commission. It recommended that G.S. 15A-534.1 be amended to provide that a defendant may be retained in custody no more than 12 (now 48) hours from the time of arrest without a bond hearing, and that if a judge has not acted within 12 (now 48) hours of arrest, the magistrate shall set bond and conditions of pretrial release. The Commission voted to recommend legislation making that change to the 1996 Regular Session.

Finally, the Commission discussed making changes to the Commission membership. The Commission voted to recommend legislation to the 1996 Regular Session that would do the following: add four voting, non-lawyer members to the Commission, and allow the representatives from the N.C. State Bar and the N.C. Bar Association to be voting members of the Commission.

## APPENDIX A

### G.S. CHAPTER 7A, ARTICLE 40A: NORTH CAROLINA COURTS COMMISSION

**§ 7A-506. Creation; members; terms; qualifications; vacancies.**

(a) The North Carolina Courts Commission is created. Effective July 1, 1993, it shall consist of 24 members, six to be appointed by the Governor, six to be appointed by the Speaker of the House of Representatives, six to be appointed by the President Pro Tempore of the Senate, and six to be appointed by the Chief Justice of the Supreme Court.

(b) Of the appointees of the Chief Justice of the Supreme Court, one shall be a Justice of the Supreme Court, one shall be a Judge of the Court of Appeals, two shall be judges of superior court, and two shall be district court judges.

(c) Of the six appointees of the Governor, one shall be a district attorney, one shall be a practicing attorney, one shall be a clerk of superior court, at least three shall be members of the General Assembly, and at least one shall not be an attorney.

(d) Of the six appointees of the Speaker of the House, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, and at least one shall not be an attorney.

(e) Of the six appointees of the President Pro Tempore of the Senate, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, and at least one shall be a magistrate.

(f) Of the initial appointments of each appointing authority, three shall be appointed for four-year terms to begin July 1, 1993, and three shall be appointed for two-year terms to begin July 1, 1993. Successors shall be appointed for four-year terms.

(g) A vacancy in membership shall be filled for the remainder of the unexpired term by the appointing authority who made the original appointment. A member whose term expires may be reappointed.

**§7A-507. Ex officio members.**

The following additional members shall serve ex officio: the Administrative Officer of the Courts; a representative of the N. C. State Bar appointed by the Council thereof; and a representative of the N. C. Bar Association appointed by the Board of Governors thereof. Ex officio members have no vote.

**§7A-508. Duties.**

It shall be the duty of the Commission to make continuing studies of the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and of the General Court of Justice and to make recommendations to the General Assembly for such changes therein as will facilitate the administration of justice.

**§ 7A-509. Chair; meetings; compensation of members.**

The Governor, after consultation with the Chief Justice of the Supreme Court, shall appoint a chair from the legislative members of the Commission. The term of the chair is two years, and the chair may be reappointed. The Commission shall meet at such times and places as the chair shall designate. The facilities of the State Legislative Building shall be available to the Commission, subject to approval of the Legislative Services Commission. The members of the Commission shall receive the same per

diem and reimbursement for travel expenses as members of State boards and commissions generally.

**§7A-510. Supporting services.**

The Commission is authorized to contract for such professional and clerical services as are necessary in the proper performance of its duties.

**APPENDIX B**

**NORTH CAROLINA COURTS COMMISSION  
MEMBERSHIP  
1995 - 1996**

**Governor's Appointments**

Rep. Robert C. Hunter, Chairman  
P.O. Drawer 1330  
Marion, NC 28752  
(704)652-2844

Hon. Robert H. "Bob" Christy, Jr.  
60 Court Plaza  
Asheville, NC 28801  
(704)255-4746

Hon. Carl Fox  
P.O. Box 1118  
Chapel Hill, NC 27514  
(919)732-9334

Rep. Paul R. "Jaybird" McCrary  
310 Westover Drive  
Lexington, NC 27292  
(704)249-9285

Sen. T.L. "Fountain" Odom  
1100 South Tryon Street  
Charlotte, NC 28203  
(704)372-4800

W. Douglas "Doug" Parsons  
P.O. Box 1400  
Clinton, NC 28328  
(919)592-7066

**Chief Justice's Appointments**

Hon. Richard B. Allsbrook  
Senior Resident Superior Court Judge  
Halifax County Courthouse  
Halifax, NC 27839  
(919)583-8121

Hon. William A. Christian  
Chief District Court Judge  
P.O. Box 2007  
Sanford, NC 27330  
(919)774-7570

**President Pro Tempore's Appointments**

Sen. Patrick J. Ballantine  
PO Box 473  
Wilmington, NC 28402  
(910)763-0673

Mr. Bob Burchette  
Johnston, Taylor, Allison & Hord  
Attorney at Law  
101 North McDowell Street, Ste.100  
Charlotte, NC 28204

Mr. Phillip Ginn  
P.O. Box 427  
Boone, NC 28607

Sen. Wilbur P. Gulley  
4803 Montvale Drive  
Durham, NC 27707  
(919)683-1584

Mr. J. Carl Hayes  
P.O. Box 9  
Manteo, NC 27954

Sen. Anthony Rand  
2008 Litho Place  
Fayetteville, NC 28304  
(800)682-7971

**Speaker's Appointments**

Rep. William Culpepper, III  
PO Box 344  
Edenton, NC 27932  
(919) 482-3818

Rep. N. Leo Daughtry  
405 East Market Street  
PO Box 1960  
Smithfield, NC 27577  
(919)934-5012

Hon. Robert P. Johnston  
Resident Superior Court Judge  
Mecklenburg County Courthouse  
700 E. Fourth Street  
Charlotte, NC 28202  
(704)347-7800

Hon. Patricia A. Timmons-Goodson  
District Court Judge  
Cumberland County Courthouse  
P.O. Box 363  
Fayetteville, NC 28302  
(919)678-2901

Hon. Willis P. Whichard  
Associate Justice  
Supreme Court  
P.O. Box 1841  
Raleigh, NC 27602  
(919)733-3714

Hon. James A. Wynn, Jr., Judge  
Court of Appeals  
P.O. Box 888  
Raleigh, NC 27602  
(919)733-6185

Rep. David T. Flaherty, Jr.  
P.O. Drawer 1586  
Lenoir, NC 28645  
(704)754-0961

Mr. George T. Griffin  
Cumberland County Clerk of Court  
P.O. Box 363  
Fayetteville, NC 28302

Rep. Robert J. Hensley, Jr.  
124 St. Mary's Street  
Raleigh, NC 27605  
(919)832-9651

Rep. Charles Neely  
3065 Granville Drive  
Raleigh, NC 27609  
(919)782-3845

#### Ex Officio

#### Administrative Office of the Courts

Hon. Jack Cozort, Acting Director  
Justice Building  
2 East Morgan Street  
Raleigh, NC 27601-1400  
(919)733-7107

#### N.C. State Bar Representative

Ms. Ann Reed  
P.O. Box 629  
Raleigh, NC 27602  
(919)733-3377

#### N.C. Bar Association Representative

Mr. Wade Barber, Jr.  
206 Hillsborough Street  
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Pittsboro, NC 27312  
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#### Staff:

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Ms. Lynn Marshbanks  
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#### Clerk:

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Ms. Joan G. Brannon (919)966-4178  
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## APPENDIX C

### The Supreme Court of North Carolina Caseflow Management Plan Report to the General Assembly May 1, 1996

In order to develop a caseflow management plan for the courts of North Carolina, a brief history is important for a full understanding of the complexity of managing the workload of the trial courts.

In the late 1950's a court reform committee, chaired by then State Senator J. Spencer Bell, was established. That committee's report, which recommended a unified, state-funded court system, was accepted by the 1961 General Assembly and subsequently affirmed by the citizens of North Carolina through the passage of constitutional amendments which created our current system of statewide courts. In most jurisdictions in the United States, North Carolina's court structure is viewed as a model for a uniform court system. Many other states still retain local courts that vary from county to county or city to city in the nature of their responsibility and their financial support. North Carolina is past that hurdle and our system for many years after its restructuring was able to absorb the increase in case filings and avoid the need for major changes.

By fiscal year 1994-95, however, the total Superior Court filings of criminal, civil, special proceedings, and estates cases was 253,922, an increase of 59% over Superior Court filings ten years ago. In the District Court, the total filings for all case types totaled 2,395,058, an increase of 60% over all District Court filings in FY 1984-85. As Table 1 indicates, this is a considerably larger caseload than the system, and the judges, district attorneys, and clerks within the system, have ever handled before. Not only has the total number of filings jumped, but the seriousness and complexity of the disputes have also increased. The appearance of cocaine in North Carolina in 1985 adversely impacted on the criminal justice system's ability to process the rapid increase in felony filings. Since the passage of the equitable distribution statutes in October of 1981, the District Courts have been greatly impacted by the number and complexity of equitable distribution cases. Also, the seriousness of juvenile crime has increased dramatically as evidenced by the fact that from 1987 through 1995 non-divertible<sup>1</sup> juvenile complaints increased from 562 to 1621 and the number of juveniles bound over to Superior Court increased from 50 in 1987 to 173 in 1994.

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<sup>1</sup> Nondivertible offenses are murder; 1st or 2nd degree rape; 1st or 2nd degree sexual offense; arson; any felony under G.S. Ch.90, Art. 5 (the Controlled Substances Act); 1st degree burglary; crime against nature; or any felony that involves willful infliction of serious bodily injury on another or that was committed by use of a deadly weapon. G.S. 7A-531

Caseloads of this magnitude pose a tremendous management challenge for the judicial system. This increase in caseload, and in the delay and backlog which have followed, are some of the factors that prompted the establishment of a blue ribbon Futures Commission to recommend the best system for grappling with the anticipated demands of the opening decades of the 21st century. The work of that Commission is drawing to a close, and is expected to result in recommendations that, if adopted, would alter once again the operation and structure of our system, and hopefully position us to face the challenges of the coming years.

It is also worthy of note that one of the problems with our current system is also one of its strengths. Four separate and distinct constitutional offices must combine forces for the efficient operation of the court. The office of the Judge, the Clerk of Court, the District Attorney, and the Sheriff must work together for the judicial system to avoid some of the problems which cause delay. Each of these offices has substantial other duties to perform aside from the actual operation of the court, and each views their court responsibilities within the realities of their environment. It is understandable that when conflicts occur, with the demands placed on these officials, at times there is an honest disagreement among them as to what is the most important responsibility. Perhaps there should be both a redefinition of all of our roles in this era of mushrooming caseloads which require a more efficient use of the limited time in court, and a renewed emphasis on the importance of caseload management as a responsibility of all of the participants.

Many years of study of case management have consistently demonstrated that to achieve the goals of timely dispositions, enhanced quality of the court process, equal treatment of all litigants, and public confidence in the court as an institution, successful courts have followed a body of principles. This has proven equally true in North Carolina in those districts where effective case management plans have been developed. Those basic principles are as follows:

1. Court delay is not inevitable.
2. Differences between fast and slow courts are not determined by district size or case filings per judge.
3. There is a strong correlation between case backlog and delay.<sup>2</sup>
4. Caseload management practices affect case processing time. An effective case management program generally includes early and continuous control of each case, firm continuance policies, firm dates for the completion of specified tasks including trial if needed, time standards and close case monitoring, and adequate court time and facilities.

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<sup>2</sup> According to the ABA Standards Relating to Court Delay Reduction, case backlog is defined in the commentary to Section 2.54 as "more cases pending than the court is able to close out over a given period of time;" delay is defined in the commentary to Section 2.50 as "any elapsed time beyond that necessary to prepare and conclude a particular case."

5. There must be a long-term commitment to these policies by the judiciary particularly, and other involved constitutional officers; change does not always produce immediate results and old habits are hard to reform.

6. Delay can be reduced significantly as has been demonstrated in some judicial districts.

7. There needs to be significant state-level leadership both within the judicial branch and the legislature, but the commitment at the local level is equally critical.

8. There are no quick fix solutions to the problems we face, and no single model will fit all circumstances, but there are successful models of civil and criminal courts producing the desired results.

Additionally, for effective case management the courts need adequate staff, sufficient computers and equipment, and equitable staffing policies for each district and division based on a common statewide policy.

Another issue which must be addressed is the continuance policy. There can be no effective case management if the court does not develop a strong policy on continuances. This does not mean that the court should abdicate its inherent authority to make certain that every litigant has a fair and equal opportunity to have his or her case fully heard with all the necessary witnesses and evidence present. But it should not be the assumed policy that any case, whether a simple traffic violation or a complex civil case, can be continued simply by asking. A system which operates in this fashion does little to insure equal treatment of all litigants, and erodes public confidence in the system.

The responsibility for establishing continuance policies lies with the Senior Resident Superior Court Judge for Superior Court matters, and the Chief District Court Judge for all District Court matters. Those judges shall promulgate and implement written policies, as local rules, designed to reduce delay and insure fairness. Those rules shall be filed with the Administrative Office of the Courts and shall incorporate timelines to effect disposition of cases which are consistent with those recommended in this report. Controlling the court's workload can be accomplished with a policy that includes at least the following elements:

1. Judges must be informed on a regular basis of past continuance history, including who granted the continuance, and the percentage of the calendar continued.
2. The quality of the cases calendared must be determined so that more cases are not calendared than can be disposed ("calendar integrity").
3. Once a case is calendared, proceed to trial unless just reason requires otherwise.

4. When a case must be continued, it shall be continued to a specific date.
5. A provision setting out conditions under which written motions for continuance and notice to opposing counsel are required, and when they must be signed by the civil litigant or the criminal defendant making the motion are required.
6. Emphasize that the various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Many of the general policies discussed previously are equally applicable to both civil and criminal cases, but in criminal cases they must be adapted to allow for the necessary involvement of the elected District Attorneys in management of the criminal calendar at the Superior Court level. There are at this time two criminal Superior Court pilot programs, partially funded by special legislation, that show great promise. Those programs are in the 12th Judicial District, a single-county district, and the 13th Judicial District, a multi-county district. While both programs use a similar method, they also allow for the differences present within those districts. Both programs have shown early promise of increasing court efficiency and improving the appearance of fairness between the prosecution and defense elements of the criminal justice system. If the programs continue to have success, this Court may recommend adoption of a model plan based on these test sites for use throughout the state. The pilot projects have shown that regardless of what specific plan is adopted, the following elements must be included for effective caseflow management of criminal cases in Superior Court:

1. Early prosecutorial screening and charging decisions. If any additional resources are needed, it may well be that pre-charge screening by the District Attorney is one area that needs to be addressed. While it is clear that a magistrate may issue an arrest warrant when the essential elements are met, it does not necessarily follow that the evidence which is available justifies the substantial investment of time and taxpayers' money in the prosecution of the case. Unfortunately, the weakness of a criminal case is often discovered after reputations are destroyed and large sums of money are spent, and no amount of explaining ever fully satisfies the victim and his/her family or the defendant and his/her family.

2. Early appointment of counsel, if such is required, so that the cases can be disposed of at the earliest possible time.

3. Early and open discovery so that the counsel for defendant can know how serious the case is from an evidentiary standpoint, and similar reciprocity by the defendant such as the nature of the defense.

4. Systematic scheduling so that the case is on track for disposition at the earliest possible time.

5. Early and consistent involvement by a Superior Court Judge, working in cooperation with the District Attorney, in the management process.

To address issues of accountability, training, and access/convenience to court participants, we recommend the following:

1. The Administrative Office of the Courts shall expeditiously pursue the completion of the Automated Civil System which will provide automated information on civil cases, enabling the Senior Resident Superior Court Judge and the Chief District Court Judge, and court staff, to monitor deadlines for completion of events, such as discovery, and allow special monitoring of various types of cases that can be identified by the new system, such as equitable distribution matters. Attached to this report is an explanation of the civil system being developed and the AOC's time line for its completion. [Attachment A] In addition, a continuance/disposition tracking system should be created with information being provided from the automated criminal information system, and clerks should be trained by staff of the Administrative Office of the Courts to put any additional information into the system as required for such a tracking system. This system will provide regular reports on continuance and disposition rates for every criminal court session.

2. Training should be the responsibility of the respective conferences, using Institute of Government and Administrative Office of the Courts staff. In addition, the Senior Resident Superior Court Judges as a group, and the Chief District Court Judges as a group, should meet regularly to address management issues specifically. Local judicial councils, composed of the Senior Resident Superior Court Judge, Chief District Court Judge, District Attorney, Public Defender, and Clerks of every county in the district should be created to address management issues and recommend any needed training.

3. Professional case management staff positions, called Trial Court Administrators, currently serve thirteen Judicial Districts. It is recommended that such assistance be available to Senior Resident Superior Court Judges and Chief District Court Judges in every judicial district. This could be accomplished through creation of Trial Court Administrator positions in the larger Judicial Districts where there is no such staff person. For the smaller Judicial Districts, such Trial Court Administrator positions could be created to provide direct caseload management assistance on a regional basis, by defining a group of districts for which this person is responsible.

4. The key to improving access and convenience to those persons whose attendance is required by the court is to provide more convenient alternatives to litigation, to reduce the times that they are required to attend court through better case management and preparation, and strict continuance policies. In addition to the caseload management policies recommended previously in this report, we encourage the following:

- The Court-Ordered Arbitration Program should be expanded to all Judicial Districts within the next two years. (See enclosed program description.) This will make more court time available for trying domestic, juvenile, and criminal matters in the District Courts.

- The Child Custody Mediation Program should also be expanded to every Judicial District within the next two years. (See enclosed program description.) This program assures that the child's best interest is considered by the parents before the court considers resolution of custody.

- The Mediated Settlement Conferences for civil Superior Court (see attached summary of this program) are now in operation in every Judicial District. The Supreme Court Rules providing for these conferences also allow for the development of other settlement procedures. The Administrative Office of the Courts, in conjunction with the Conference of Superior Court Judges, should investigate the feasibility of such other settlement procedures.

5. Although judicial rotation is vital to our unified, uniform court system and should be retained, the administrative duties of the Senior Judge should be re-defined in light of the changing judicial climate as new programs such as arbitration and mediated settlement conferences, criminal caseload management plans such as the pilot programs, and other caseload management techniques are adopted and implemented statewide.

In conclusion, the goals of caseload management are designed to expedite the disposition of cases in a manner consistent with fairness to all parties, to enhance the quality of litigation, to assure equal access to the adjudicative process for all litigants, and to minimize the uncertainties associated with processing cases. A critical factor in caseload management is the assumption of judicial responsibility for the control of the court's caseload. The judge must be vested with the power, and assume the responsibility in civil matters, to press the attorneys and litigants into resolving the case in no more than the time needed for full consideration by the court. In criminal matters, judges must be willing to become actively involved in a case management system bringing together the judiciary, the prosecutors, and representatives of defendants. Delay devalues judgments, creates anxiety in litigants and the public, and uncertainty for lawyers. It wastes court resources, needlessly increases costs of litigation, and creates confusion and conflict in the allocation of court resources.

To accomplish our goal, it is obvious that there must not only be a judicial commitment, but a collective team effort for success. The team should consist of the Superior Court Judges, District Court Judges, District Attorney, Public Defender (where available), Trial Court Administrator (for those districts having one) and the local Bar President, and Clerk of Superior Court. While legislation may be needed to make some of the recommendations a reality, the success of caseflow management will ultimately rest on the shoulders of those responsible persons at the local level.

Ultimately, trial courts will want to know how well they are performing as they undertake a renewed effort to better serve the community. A number of organizations interested in trial court performance have developed standards that have been adopted and implemented by over 28 states and in some of the courts in North Carolina. We adopt these standards as a goal to be attained so that the measuring stick for our performance is well-recognized. [See Attachment B.]

GENERAL ASSEMBLY OF NORTH CAROLINA  
1995 SESSION  
RATIFIED BILL

CHAPTER 333  
HOUSE BILL 231

AN ACT TO REQUEST THE SUPREME COURT TO ADOPT A PLAN TO  
ADMINISTER JUSTICE WITHOUT DELAY IN NORTH CAROLINA TRIAL  
COURTS.

The General Assembly of North Carolina enacts:

Section 1. The North Carolina Supreme Court is requested to develop and implement a case flow management plan designed to avoid delay and unnecessary appearances and to increase efficiency in the handling of cases in North Carolina's trial courts. The plan should:

- (1) Place responsibility for managing the flow of cases on specific persons;
- (2) Adopt case processing standards and goals;
- (3) Address the problem of delay;
- (4) Avoid unnecessary appearances in court by parties, witnesses, and attorneys;
- (5) Provide mechanisms for keeping continuous control of cases;
- (6) Establish definite deadlines throughout the process;
- (7) Include a limited continuance policy;
- (8) Consider the interests of victims and witnesses;
- (9) Set out accountability mechanisms; and
- (10) Provide for training of those persons responsible for managing the case flow.

Sec. 2. The Supreme Court is requested to make a report detailing the case flow management plan to the 1995 General Assembly, Regular Session 1996, by May 1, 1996. The report should include the recommended standards and goals; a report of the plan to implement those standards and goals; a timetable for implementation; persons responsible for managing the flow of cases and how they will be held accountable; how the plan is going to be evaluated; what training is necessary; and recommended legislation to facilitate implementation.

## Growth in Caseload, FY83/4 -- FY94/5

	83/4	84/5	85/6	86/7	87/8	88/9	89/90	90/1	91/2	92/3	93/4	94/5	% Change from 83/4 to 94/5
Number of Magistrates	614	623	631	637	640	644	654	659	653	658	659	676	10.1%
Total Caseload	382,780	412,534	445,839	468,131	514,710	556,890	603,328	610,286	629,589	607,989	620,977	632,836	65.3%
Caseload per Magistrate	623	662	707	735	804	865	923	926	964	924	942	936	50.2%
Number of Clerks	1,556.00	1,600.50	1,602.50	1,725.60	1,745.60	1,756.60	1,820.00	1,824.90	1,863.95	1,914.15	2,025.15	2,021.50	29.9%
Total Caseload	1,600,859	1,714,204	1,850,531	2,050,442	2,197,045	2,415,328	2,493,245	2,485,191	2,541,175	2,451,457	2,541,072	2,674,853	67.1%
Caseload per Clerk	1,029	1,071	1,155	1,188	1,259	1,375	1,370	1,362	1,363	1,281	1,255	1,323	28.6%
Number of Prosecutors	248	253	257	257	262	268	287	294	304	325	338	338	36.3%
Total Caseload	715,733	755,457	834,172	959,710	1,049,721	1,183,538	1,299,865	1,307,817	1,345,084	1,305,630	1,377,080	1,472,335	105.7%
Caseload per Prosecutor	2,886	2,986	3,246	3,734	4,007	4,416	4,529	4,448	4,425	4,017	4,074	4,356	50.9%
Number of District Court Judges	146	146	146	151	151	162	164	179	179	179	180	192	31.5%
Total Caseload	624,411	636,612	699,352	798,570	871,665	982,139	1,066,847	1,052,315	1,070,924	1,020,143	1,104,660	1,176,347	88.4%
Caseload per Judge	4,277	4,360	4,790	5,289	5,773	6,063	6,505	5,879	5,983	5,699	6,137	6,127	43.3%
Number of Superior Court Judge	68	72	72	72	74	77	77	82	82	82	92	93	36.8%
Total Caseload	55,154	59,553	63,409	66,545	72,383	81,615	89,195	90,790	99,438	91,575	93,387	89,308	61.9%
Caseload per Judge	811	827	881	924	978	1,060	1,158	1,107	1,213	1,117	1,015	960	18.4%

Number of magistrates is the number authorized at the end of each fiscal year. Number of clerks includes the Clerks of Superior Court and their assistants and deputies as authorized at the end of the fiscal year. Number of prosecutors includes the district attorneys and their assistant district attorneys as authorized at the end of the fiscal year. Numbers of judges are the numbers of judgeships authorized at the end of the fiscal year (including special superior court judgeships).

Total caseload for magistrates is represented by the number of non-motor vehicle filings. Total caseload for prosecutors includes all criminal and infraction filings, less those disposed by waiver of appearance. District court judge caseload is the number of district court filings less those disposed by clerks or magistrates, by voluntary dismissal, and those superseded by indictment. Superior court judge caseload includes all superior criminal and civil filings, less those disposed by clerks or by voluntary dismissal.

## Attachment A

The new Automated Civil System will automate all major aspects of civil indexing, docketing, tracking, calendaring, judgment abstracting, and processing post-judgment activities. This system will provide judges, clerks, attorneys, litigants, and the public with considerable detail on civil case events and with a greatly enhanced management capacity.

In developing the proposed system, the Civil System Task Force set the following goals:

- Goal 1: Improve access to civil court records for judicial staff and the public
- Goal 2: Improve case management
- Goal 3: Improve recordkeeping procedures
- Goal 4: Maximize technology

Indexing features of this civil system provide users with the ability to conduct a party name search within a specific case type, such as CVM, CVD, CVS, or estates, or across all divisions, within a particular county, set of counties, or statewide. The party name search then allows additional inquiry as to service documents issued and the returns made thereon, answers and motions filed, the disposition or result of each of those motions, the names and addresses of all parties to the case, the names and addresses of all attorneys on record for each party in the case, and the disposition of the case.

In addition to public inquiry based upon party name, users will also be able to inquire about a case in any county, by case file number. The data base will include all issues or claims for relief, service records, answers, motions and the results of those motions, and the disposition of every claim for relief filed in these cases. The system also includes records on the appeal of cases from CVM to CVD and the appeal of individual orders filed in both CVD and CVS cases. The returns of these appeals will also be recorded in the system, such as affirmed, remanded and remanded in part.

Case management using this system includes the ability to schedule cases for a particular time, date and location for the purposes of hearings, trials, or administrative review. Cases may be assigned to dispute resolution programs, such as arbitration, and assigned to individual judicial officials as required by local rules and statewide programs. The system allows for generation of a variety of reports, including reports which list cases with specific pending issues such as equitable distribution, custody or condemnation. Other reports include a list of cases by attorney bar number, a list of cases that have been adjudicated but without final orders filed for judicial signature, regular civil trial and motions calendars, and the small claims calendar for magistrates.

The schedule for implementation is tentative, as testing is still underway. Upon completion of testing and piloting, the system will be distributed and implemented in every county over the course of the following year.

## Program Title

Court-Ordered Arbitration

## History

In 1986, the General Assembly enacted legislation authorizing the Supreme Court to establish a pilot program of court-ordered, non-binding arbitration for claims for money damages of \$15,000 or less. On January 1, 1987, a controlled experiment in arbitration began in the three pilot sites designated by the Court: Judicial Districts 3, 14, and 29. Based on the success of the pilot, the General Assembly enacted legislation during the 1989 Session authorizing arbitration statewide.

## Description

Under G.S. 7A-37.1 and the Supreme Court Rules for Court-Ordered Arbitration in North Carolina, all cases involving claims for money damages of \$15,000 or less are eligible for arbitration. Specifically excluded from arbitration are certain property disputes, family law matters, estates, special proceedings, and class actions. Parties may, however, voluntarily submit any other civil dispute to arbitration.

By rule, the arbitration hearing is conducted within 60 days of the filing of the last responsive pleading. Parties may stipulate to an arbitrator, but in the absence of a stipulation, the court appoints an arbitrator from its list. To appear on this list, an arbitrator must: have been licensed to practice law for at least five years, with the last two as a member of the North Carolina State Bar; undergo arbitrator training; and be designated by the senior resident superior court judge and chief district court judge. The arbitrator is paid a \$75 fee by the court for each arbitration hearing.

Arbitration hearings are limited by rule to one hour and take place in the courthouse. The hearings are conducted in a serious but relaxed atmosphere, with the rules of evidence serving as a guide. Once concluded, the arbitrator renders an award, which is filed with the court. A party dissatisfied with the award may proceed to a trial de novo by filing a written request with the court within 30 days of the award. If no action is taken during this time, the court enters judgment on the award.

## Status

As of December, 1995, arbitration operated in 18 superior court districts. At least six additional districts will be added in fiscal year 1995-96. Funding is requested to expand into ten districts in each of the next two fiscal years, providing for a statewide program by the end of fiscal year 1997-98.

April 1996

## Program Title

Mediated Settlement Conferences

## History

In 1991, the General Assembly authorized a pilot program of court-ordered mediated settlement conferences for Superior Court civil cases. The pilot program began in December, 1991, in eight pilot sites: Judicial Districts 6A, 12, 13, 15B, 17B, 18, 21, and 30B. In 1994, four additional districts were added: 8B, 10, 26, and 28. Based on an evaluation performed by the Institute of Government, the General Assembly enacted legislation authorizing this procedure statewide.

## Description

Under G.S. 7A-38 and the Supreme Court's Rules Governing Mediated Settlement Conferences, the Senior Resident Superior Court Judge may order parties in any civil action to attend a pre-trial mediated settlement conference. Specifically excluded are habeas corpus proceedings or other actions for extraordinary writs. The rules provide that the conference shall be completed no more than 180 days after the court's order.

Parties may stipulate to a mediator, or the Court will appoint one from its list of certified mediators. The Dispute Resolution Commission certifies both attorneys and non-attorneys meeting the training and experience requirements set out in the Rules. Mediators are paid by the parties; for Court-appointed mediators, the fee is set at \$100 per hour for conference time, plus a \$100 per case administrative fee. If selected by the parties, the mediator's fee is negotiated between the parties and their mediator.

Mediated settlement conferences are scheduled by the mediator and are generally held in the courthouse or at some other mutually agreed location. Conferences are conducted in private, with the mediator serving as a neutral facilitator. At the conclusion of a conference, the mediator notifies the court of the conference outcome.

## Status

As of January 1, 1996, all senior resident superior court judges may order eligible cases to a mediated settlement conference.

April 1996

## Attachment B

### Deadlines for Significant Event Throughout the Process

Recommend the establishment of deadlines for significant events throughout the process like the following:

#### CRIMINAL

Superior Court. Indictment should occur within 90 days of arrest. Arraignment should occur within 90 days of indictment in all counties in which there are 20 or more weeks of regularly scheduled trial sessions of superior criminal court. With the exception of capital cases and other exceptional cases, trial should occur within 180 days of arraignment. Misdemeanor appeals should be tried within 180 days of the transfer of the case to Superior Court.

District Court. Criminal cases should be tried within 120 days of the first scheduled court appearance.

#### CIVIL

Superior Court. Discovery should be completed within 120 days of the date of the last responsive pleading. Within 30 days of the last responsive pleading, cases should be ordered to the appropriate dispute resolution process, and follow the deadlines set out in the rules for the process. With the exception of medical malpractice cases, condemnation cases, and other exceptional cases, trial should occur within 180 days of the completion of discovery.

District Civil. Discovery should be completed within 120 days of the date of the last responsive pleading. In districts with arbitration, eligible cases should be arbitrated within 60 days of the last responsive pleading. Trial should occur within 240 days of the date of filing.

District Domestic. In domestic cases, the deadlines for specific issues are as follows:

Child support issues - a temporary or permanent order shall be entered within 60 days of service.

Custody and visitation issues - in districts with custody mediation, issues of custody and visitation should be ordered to mediation within 90 days from filing.

Equitable distribution issues - a scheduling conference should be held within 150 days of filing. An initial pretrial conference should be held within 120 days of the scheduling conference. Trial should occur within 180 days of the initial pretrial conference.

All other issues - should be resolved within 270 days of filing.

District Juvenile: A committee under the Administrative Office of the Courts is preparing model local rules for juvenile matters, which will be submitted to the Supreme Court this year.

## Case Processing Standards and Goals

Recommend the establishment of guidelines for processing cases through the court as set out below:

### Felonies.

- 50% disposed within 120 days of indictment
- 75% disposed within 180 days of indictment
- 90% disposed within 365 days of indictment
- 100% disposed within 545 days of indictment

### Non-Motor Vehicle Misdemeanors.<sup>3</sup>

- 75% disposed within 60 days of filing
- 90% disposed within 90 days of filing
- 98% disposed within 120 days of filing
- 100% disposed within 365 days of filing

### Motor Vehicle Misdemeanors.<sup>4</sup>

- 75% disposed within 30 days of the date of the first court appearance
- 90% disposed within 90 days of the date of the first court appearance
- 100% disposed within 150 days of the date of the first court appearance

### Civil.

- 90% disposed within 365 days of filing
- 98% disposed within 545 days of filing
- 100% disposed within 730 days of filing  
(Exceptional cases beyond 24 months)

### Domestic.

- 75% disposed within 90 days of filing
- 90% disposed within 180 days of filing
- 100% disposed within 545 days of filing

### Small Claims.

- 75% disposed within 30 days of filing
- 100% disposed within 120 days of filing

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<sup>3</sup> Disposition times are from filing to disposition in District Court.

<sup>4</sup> These times also are for dispositions in District Court. Since all motor vehicle offenses are initially set for the officer's next court date, the first court appearance will normally be within 30 days of the case filing. The court's statistical reporting system cannot provide numbers that use "date of first court appearance" as the starting point for disposition times. Therefore any reporting from the criminal case data base will be from filing to disposition, which will add up to 30 days to the disposition times listed.

The Supreme Court created an Advisory Committee to assist in the drafting of this report, composed of:

The Honorable Henry E. Frye, Chair  
Associate Justice of the Supreme Court of North Carolina

The Honorable W. Douglas Albright  
Senior Resident Superior Court Judge  
Judicial District 18

The Honorable Robert W. Kirby  
Emergency Superior Court Judge

The Honorable A. Elizabeth Keever  
Chief District Court Judge  
Judicial District 12

The Honorable Lawrence McSwain  
District Court Judge  
Judicial District 18

The Honorable John J. Snow, Jr.  
Chief District Court Judge  
Judicial District 30

The Honorable Thomas S. Payne, III  
Clerk of Superior Court  
Beaufort County

The Honorable Catherine S. Wilson  
Clerk of Superior Court  
Richmond County

The Honorable Peter S. Gilchrist, III  
District Attorney  
Prosecutorial District 26

The Honorable Rex Gore  
District Attorney  
Prosecutorial District 13

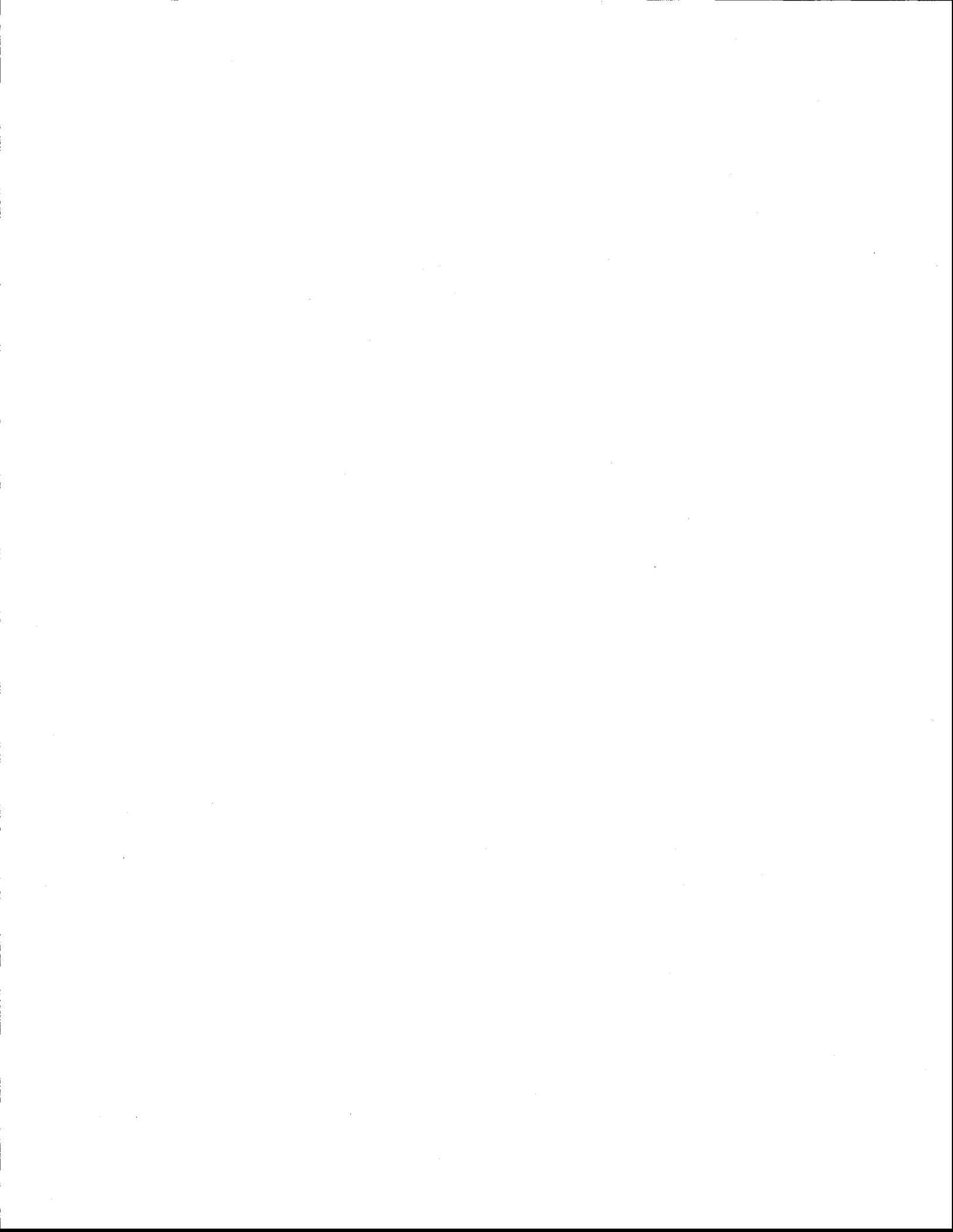
The Honorable Thomas J. Keith  
District Attorney  
Prosecutorial District 21

Mr. Paul F. Herzog  
Public Defender  
Judicial District 12

Mr. Kellum Morris  
Public Defender  
Judicial District 27A

Ms. Joal Hall  
Assistant Public Defender  
Judicial District 15B

Mr. Bob Ward  
Assistant Public Defender  
Judicial District 26







APPENDIX D

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-rgz-002

THIS IS A DRAFT 9-MAY-96 15:45:00

Short Title: Restitution/Civil Judgment.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW THE ENFORCEMENT OF RESTITUTION IN A CRIMINAL CASE  
3 IN THE SAME MANNER AS A CIVIL JUDGMENT, TO CREATE AN EXCEPTION  
4 TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF SUCH A JUDGMENT,  
5 AND TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS  
6 IN A CRIMINAL CASE.  
7 The General Assembly of North Carolina enacts:  
8           Section 1. G.S. 15A-1343(d) reads as rewritten:  
9       "(d) Restitution as a Condition of Probation. -- As a  
10 condition of probation, a defendant may be required to make  
11 restitution or reparation to an aggrieved party or parties who  
12 shall be named by the court for the damage or loss caused by the  
13 defendant arising out of the offense or offenses committed by the  
14 defendant. When restitution or reparation is a condition  
15 imposed, the court shall hold a hearing to determine the amount  
16 of restitution or reparation due the aggrieved party or parties.  
17 The court shall take into consideration the resources of the  
18 defendant, including all real and personal property owned by the  
19 defendant and the income derived from such property, his ability  
20 to earn, his obligation to support dependents, and such other

1 matters as shall pertain to his ability to make restitution or  
2 reparation, but the court is not required to make findings of  
3 fact or conclusions of law on these matters when the sentence is  
4 imposed. The amount must be limited to that supported by the  
5 record, and the court may order partial restitution or reparation  
6 when it appears that the damage or loss caused by the offense or  
7 offenses is greater than that which the defendant is able to pay.  
8 An order providing for restitution or reparation, as a condition  
9 of supervised or unsupervised probation, except an order  
10 resulting from a worthless check, may be enforced in the same  
11 manner as a civil judgment as provided in this subsection. Upon a  
12 finding that restitution in a sum certain remains due and  
13 payable, and that the defendant's probation should be terminated  
14 or revoked, the judge presiding at the probation termination or  
15 revocation hearing shall order that a judgment be docketed  
16 pursuant to G.S. 1-233 et seq. in the county of the original  
17 conviction as of the date of notification to the clerk in that  
18 county. The clerk shall add to the amount of the judgment to be  
19 docketed amounts equal to the standard fees for docketing,  
20 copying, certification, and mailing, as appropriate, and shall  
21 collect any other fees or charges incurred as in the enforcement  
22 of other civil judgments. The clerk shall notify the victim by  
23 first class mail at the victim's last known address of the  
24 docketing of the judgment and provide the victim with a certified  
25 copy of the order directing entry of the civil judgment. An  
26 order providing for restitution or reparation or a civil judgment  
27 under this section shall in no way abridge the right of any  
28 aggrieved party to bring a civil action against the defendant for  
29 money damages arising out of the offense or offenses committed by  
30 the defendant, but any amount paid by the defendant under the  
31 terms of an order for restitution or civil judgment as provided  
32 herein shall be credited against any judgment rendered against  
33 the defendant in such civil action. As used herein,  
34 'restitution' shall mean (i) compensation for damage or loss as  
35 could ordinarily be recovered by an aggrieved party in a civil  
36 action, and (ii) reimbursement to the State for the total amount  
37 of a judgment authorized by G.S. 7A-455(b). As used herein,  
38 'reparation' shall include but not be limited to the performing  
39 of community services, volunteer work, or doing such other acts  
40 or things as shall aid the defendant in his rehabilitation. As

1 used herein 'aggrieved party' includes individuals, firms,  
2 corporations, associations, other organizations, and government  
3 agencies, whether federal, State or local, including the Crime  
4 Victims Compensation Fund established by G.S. 15B-23. Provided,  
5 that no government agency shall benefit by way of restitution  
6 except for particular damage or loss to it over and above its  
7 normal operating costs and except that the State may receive  
8 restitution for the total amount of a judgment authorized by G.S.  
9 7A-455(b). A government agency may benefit by way of reparation  
10 even though the agency was not a party to the crime provided that  
11 when reparation is ordered, community service work shall be  
12 rendered only after approval has been granted by the owner or  
13 person in charge of the property or premises where the work will  
14 be done. Provided further, that no third party shall benefit by  
15 way of restitution or reparation as a result of the liability of  
16 that third party to pay indemnity to an aggrieved party for the  
17 damage or loss caused by the defendant, but the liability of a  
18 third party to pay indemnity to an aggrieved party or any payment  
19 of indemnity actually made by a third party to an aggrieved party  
20 does not prohibit or limit in any way the power of the court to  
21 require the defendant to make complete and full restitution or  
22 reparation to the aggrieved party for the total amount of the  
23 damage or loss caused by the defendant. Restitution or  
24 reparation measures are ancillary remedies to promote  
25 rehabilitation of criminal offenders, to provide for compensation  
26 to victims of crime, and to reimburse the Crime Victims  
27 Compensation Fund established by G.S. 15B-23, and shall not be  
28 construed to be a fine or other punishment as provided for in the  
29 Constitution and laws of this State."

30 Sec. 2. G.S. 148-57.1 is amended by adding a new  
31 subsection (c1) to read:

32 "(c1) If the court recommends restitution as provided in  
33 subsection (c) of this section, the judge shall order the clerk  
34 of court in the county of conviction to, upon the date the  
35 conviction becomes final, docket a civil judgment pursuant to  
36 G.S. 1-233 et seq. in the amount of recommended restitution. The  
37 clerk shall add to the amount of the judgment to be docketed  
38 amounts equal to the standard fees for docketing, copying,  
39 certification, and mailing, as appropriate, and shall collect any  
40 other fees or charges incurred as in the enforcement of other

1 civil judgments. The clerk shall notify the victim by first class  
2 mail at the victim's last known address of the docketing of the  
3 judgment and provide the victim with a certified copy of the  
4 order directing entry of the civil judgment. An order providing  
5 for a civil judgment under this subsection shall in no way  
6 abridge the right of any aggrieved party to bring a civil action  
7 against the defendant for money damages arising out of the  
8 offense or offenses committed by the defendant, but any amount  
9 paid by the defendant under the terms of a civil judgment as  
10 provided herein shall be credited against any judgment rendered  
11 against the defendant in such civil action."

12 Sec. 3. G.S. 1C-1601(e) reads as rewritten:

13 "(e) Exceptions. -- The exemptions provided in this Article  
14 are inapplicable to claims

- 15 (1) Of the United States or its agencies as provided by  
16 federal law;
- 17 (2) Of the State or its subdivisions for taxes,  
18 appearance bonds or fiduciary bonds;
- 19 (3) Of lien by a laborer for work done and performed  
20 for the person claiming the exemption, but only as  
21 to the specific property affected;
- 22 (4) Of lien by a mechanic for work done on the  
23 premises, but only as to the specific property  
24 affected;
- 25 (5) For payment of obligations contracted for the  
26 purchase of the specific real property affected;
- 27 (6) Repealed by Session Laws 1981 (Regular Session,  
28 1982), c. 1224, s. 6, effective September 1, 1982;
- 29 (7) For contractual security interests in the specific  
30 property affected; provided, that the exemptions  
31 shall apply to the debtor's household goods  
32 notwithstanding any contract for a nonpossessory,  
33 nonpurchase money security interest in any such  
34 goods;
- 35 (8) For statutory liens, on the specific property  
36 affected, other than judicial liens;
- 37 (9) For child support, alimony or distributive award  
38 order pursuant to Chapter 50 of the General  
39 ~~Statutes.~~ Statutes;

1           (10) For criminal restitution orders docketed as civil  
2           judgments pursuant to G.S. 15A-1343(d) or G.S. 148-  
3           57.1(c1)."

4           Sec. 4. G.S. 7A-304(d) reads as rewritten:

5       "(d) In any criminal case in which the liability for costs,  
6 fines, restitution, or any other lawful charge has been finally  
7 determined, the clerk of superior court shall, unless otherwise  
8 ordered by the presiding judge, disburse such funds when paid in  
9 accordance with the following priorities:

- 10           (1) Sums in restitution prorated among the persons  
11           entitled thereto;  
12           ~~(1)~~(2) Costs due the county;  
13           ~~(2)~~(3) Costs due the city;  
14           ~~(3)~~(4) Fines to the county school fund;  
15           ~~(4)~~ ~~Sums in restitution prorated among the persons~~  
16           ~~entitled thereto;~~  
17           (5) Costs due the State;  
18           (6) Attorney's fees.

19 Sums in restitution received by the clerk of superior court  
20 shall be disbursed when:

- 21           (1) Complete restitution has been received; or  
22           (2) When, in the opinion of the clerk, additional  
23           payments in restitution will not be collected;  
24           or  
25           (3) Upon the request of the person or persons  
26           entitled thereto; and  
27           (4) In any event, at least once each calendar  
28           year."

29           Sec. 5. This act becomes effective December 1, 1996, and  
30 applies to criminal convictions entered on or after that date.

## ANALYSIS OF PROPOSED LEGISLATION

G.S. 15A-1343(d) provides the process by which a court may order restitution to a victim as a condition of a defendant's probation. G.S. 148-57.1 allows a judge to make a recommendation of restitution as a condition of parole or post release supervision. If the judge makes a recommendation of restitution, the Post-Release Supervision and Parole Commission has the authority to make restitution a condition of parole or post-release supervision.

For probationary sentences, section 1 of the proposed legislation amends G.S. 15A-1343(d) to require a judge, upon termination or revocation of probation, to order the docketing of a civil judgment against the defendant in the amount of restitution owed. For active sentences, section 2 amends G.S. 148-57.1 to require the judge, upon a recommendation of restitution as a condition of parole, to order the docketing of a civil judgment in the amount of recommended restitution. Under both sections, the clerk may add to the judgment amounts equal to standard fees or charges incurred in the enforcement of judgments.

Section 3 of the proposed legislation would provide an exception to the exemptions from execution for these civil judgments.

Section 4 provides that of the funds paid into the court by a defendant, restitution to the victim will be disbursed first, before other costs and fines. Current law provides that restitution is disbursed fourth, after costs due the county, costs due the city, and fines to the county school fund.

APPENDIX E

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RGZ-009

THIS IS A DRAFT 14-MAY-96 15:31:07

Short Title: Domestic Violence/Pretrial Release. (Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO DECREASE THE PERIOD OF TIME IN DOMESTIC VIOLENCE CASES  
3 THAT A DEFENDANT MAY BE HELD IN CUSTODY WITHOUT A DETERMINATION  
4 OF PRETRIAL RELEASE BY A JUDGE.  
5 The General Assembly of North Carolina enacts:  
6           Section 1. G.S. 15A-534.1(b) reads as rewritten:  
7       "(b) A defendant may be retained in custody not more than 48  
8 12 hours from the time of arrest without a determination being  
9 made under this section by a judge. If a judge has not acted  
10 pursuant to this section within 48 hours of arrest, the  
11 magistrate shall act under the provisions of this section."  
12           Sec. 2. This act becomes effective July 1, 1996.

## ANALYSIS OF PROPOSED LEGISLATION

Under G.S. 15A-534.1, a determination of pretrial release and bail in domestic violence cases may only be made by a judge during the first 48 hours following arrest. If the judge has not acted within 48 hours of the defendant's arrest, the magistrate may then make a determination of pretrial release. The proposed legislation amends G.S. 15A-534.1(b) to decrease this period from 48 hours to 12 hours.

APPENDIX F

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

D

House/Senate 96-RSZ-002.1, mlm  
THIS IS A DRAFT 9-MAY-96 16:04:43

Short Title: Court Information Remote Access

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF  
3 THE COURTS TO CONTRACT WITH THIRD PARTIES TO PROVIDE REMOTE  
4 ELECTRONIC ACCESS TO COURT INFORMATION.  
5 The General Assembly of North Carolina enacts:  
6                   Section 1. G.S. 7A-109 reads as rewritten:  
7 "\$7A-109. Record-keeping procedures.  
8   (a) Each clerk shall maintain such records, files, dockets and  
9 indexes as are prescribed by rules of the Director of the  
10 Administrative Office of the Courts. Except as prohibited by law,  
11 these records shall be open to the inspection of the public during  
12 regular office hours, and shall include civil actions, special  
13 proceedings, estates, criminal actions, juvenile actions, minutes of  
14 the court, judgments, liens, lis pendens, and all other records  
15 required by law to be maintained. The rules prescribed by the Director  
16 shall be designed to accomplish the following purposes:  
17       (1) To provide an accurate record of every determinative legal  
18       action, proceeding, or event which may affect the person or  
19       property of any individual, firm, corporation, or association;

- 1 (2) To provide a record during the pendency of a case that allows  
2 for the efficient handling of the matter by the court from its  
3 initiation to conclusion and also affords information as to  
4 the progress of the case;
- 5 (3) To provide security against the loss or destruction of  
6 original documents during their useful life and a permanent  
7 record for historical uses;
- 8 (4) To provide a system of indexing that will afford adequate  
9 access to all records maintained by the clerk;
- 10 (5) To provide, to the extent possible, for the maintenance of  
11 records affecting the same action or proceeding in one rather  
12 than several units; and
- 13 (6) To provide a reservoir of information useful to those  
14 interested in measuring the effectiveness of the laws and the  
15 efficiency of the courts in administering them.
- 16 (b) The rules shall provide for indexing according to the minimum  
17 criteria set out below:
- 18 (1) Civil actions -- the names of all parties;
- 19 (2) Special proceedings -- the names of all parties;
- 20 (3) Administration of estates -- the name of the estate and in the  
21 case of testacy the name of each devisee;
- 22 (4) Criminal actions -- the names of all defendants;
- 23 (5) Juvenile actions -- the names of all juveniles;
- 24 (6) Judgments, liens, lis pendens, etc. -- the names of all  
25 parties against whom a lien has been created by the docketing  
26 of a judgment, notice of lien, transcript, certificate, or  
27 similar document and the names of all parties in those cases  
28 in which a notice of lis pendens has been filed with the clerk  
29 and abstracted on the judgment docket.
- 30 (c) The rules shall require that all documents received for  
31 docketing shall be immediately indexed either on a permanent or  
32 temporary index. The rules may prescribe any technological process  
33 deemed appropriate for the economical and efficient indexing, storage  
34 and retrieval of information.
- 35 (d) In order to facilitate public access to court records, except  
36 where public access is prohibited by law, the Director may enter into  
37 one or more non-exclusive contracts under reasonable cost recovery  
38 terms with third parties to provide remote electronic access to the  
39 records by the public."

1           Sec. 2. If any contracts entered into under G.S. 7A-109(d)  
2 are in effect during any calendar year, the Director of the  
3 Administrative Office of the Courts shall submit to the Joint  
4 Legislative Commission on Governmental Operations not later than  
5 February 1 of the following year a report on all those contracts.

6           Sec. 3. This act is effective upon ratification.

## **ANALYSIS OF PROPOSED LEGISLATION**

This legislation would authorize the Director of the Administrative Office of the Courts to contract with third parties to provide remote electronic access by the public to court records, except where public access is prohibited by law. The contracts would include reasonable cost recovery terms.

The Director of the Administrative Office of the Courts would report yearly to the Joint Legislative Commission on Governmental Operations on all contracts.

The legislation would be effective on ratification.

APPENDIX G

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H/S

D

House/Senate 96-RSZ-004, mlm  
THIS IS A DRAFT 9-MAY-96 16:09:04

Short Title: Jurisdictional Amount Increase (Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN  
3 DISTRICT AND SUPERIOR CIVIL COURTS AND TO MAKE CORRESPONDING  
4 CHANGES TO THE RULES OF CIVIL PROCEDURE AND NONBINDING  
5 ARBITRATION.  
6 The General Assembly of North Carolina enacts:  
7                   Section 1. G.S. 7A-243 reads as rewritten:  
8 "§ 7A-243. Proper division for trial of civil actions generally  
9 determined by amount in controversy.  
10 Except as otherwise provided in this Article, the district  
11 court division is the proper division for the trial of all civil  
12 actions in which the amount in controversy is ~~ten thousand~~  
13 ~~dollars (\$10,000)~~ twenty-five thousand dollars (\$25,000) or less;  
14 and the superior court division is the proper division for the  
15 trial of all civil actions in which the amount in controversy  
16 exceeds ~~ten thousand dollars (\$10,000)~~ twenty-five thousand  
17 dollars (\$25,000).  
18 For purposes of determining the amount in controversy, the  
19 following rules apply whether the relief prayed is monetary or  
20 nonmonetary, or both, and with respect to claims asserted by

1 complaint, counterclaim, cross-complaint or third-party  
2 complaint:

- 3 (1) The amount in controversy is computed without  
4 regard to interest and costs.
- 5 (2) Where monetary relief is prayed, the amount prayed  
6 for is in controversy unless the pleading in  
7 question shows to a legal certainty that the amount  
8 claimed cannot be recovered under the applicable  
9 measure of damages. The value of any property  
10 seized in attachment, claim and delivery, or other  
11 ancillary proceeding, is not in controversy and is  
12 not considered in determining the amount in  
13 controversy.
- 14 (3) Where no monetary relief is sought, but the relief  
15 sought would establish, enforce, or avoid an  
16 obligation, right or title, the value of the  
17 obligation, right, or title is in controversy.  
18 Where the owner or legal possessor of property  
19 seeks recovery of property on which a lien is  
20 asserted pursuant to G.S. 44A-4(a) the amount in  
21 controversy is that portion of the asserted lien  
22 which is disputed. The judge may require by rule or  
23 order that parties make a good faith estimate of  
24 the value of any nonmonetary relief sought.
- 25 (4) a. Except as provided in subparagraph c of this  
26 subdivision, where a single party asserts two  
27 or more properly joined claims, the claims are  
28 aggregated in computing the amount in  
29 controversy.
- 30 b. Except as provided in subparagraph c, where  
31 there are two or more parties properly joined  
32 in an action and their interests are aligned,  
33 their claims are aggregated in computing the  
34 amount in controversy.
- 35 c. No claims are aggregated ~~which~~ that are  
36 mutually exclusive and in the alternative, or  
37 ~~which~~ that are successive, in the sense that  
38 satisfaction of one claim will bar recovery  
39 upon the other.

1 d. Where there are two or more claims not subject  
2 to aggregation the highest claim is the amount  
3 in controversy.

4 (5) Where the value of the relief to a claimant differs  
5 from the cost thereof to an opposing party, the  
6 higher amount is used in determining the amount in  
7 controversy."

8 Sec. 2. G.S. 1A-1, Rule 8(a) reads as rewritten:

9 "(a) Claims for relief. -- A pleading ~~which~~ that sets forth a  
10 claim for relief, whether an original claim, counterclaim,  
11 crossclaim, or third-party claim shall contain

12 (1) A short and plain statement of the claim  
13 sufficiently particular to give the court and the  
14 parties notice of the transactions, occurrences, or  
15 series of transactions or occurrences, intended to  
16 be proved showing that the pleader is entitled to  
17 relief, and

18 (2) A demand for judgment for the relief to which ~~he~~  
19 ~~demms himself~~ the pleader claims to be entitled.  
20 Relief in the alternative or of several different  
21 types may be demanded. In all negligence actions,  
22 and in all claims for punitive damages in any civil  
23 action, wherein the matter in controversy exceeds  
24 the sum or value of ~~ten thousand dollars (\$10,000),~~  
25 twenty-five thousand dollars (\$25,000), the  
26 pleading shall not state the demand for monetary  
27 relief, but shall state that the relief demanded is  
28 for damages incurred or to be incurred in excess of  
29 ~~ten thousand dollars (\$10,000).~~ twenty-five  
30 thousand dollars (\$25,000). However, at any time  
31 after service of the claim for relief, any party  
32 may request of the claimant a written statement of  
33 the monetary relief sought, and the claimant shall,  
34 within 30 days after such service, provide ~~such~~  
35 that statement, which shall not be filed with the  
36 clerk until the action has been called for trial or  
37 entry of default entered. ~~Such~~ The statement may be  
38 amended in the manner and at times as provided by  
39 Rule 15."

40 Sec. 3. G.S. 7A-37.1 reads as rewritten:

1 "§ 7A-37.1. Statewide court-ordered, nonbinding arbitration in  
2 certain civil actions.

3 (a) The General Assembly finds that court-ordered, nonbinding  
4 arbitration may be a more economical, efficient and satisfactory  
5 procedure to resolve certain civil actions than by traditional  
6 civil litigation and therefore authorizes court-ordered  
7 nonbinding arbitration as an alternative civil procedure, subject  
8 to these provisions.

9 (b) The Supreme Court of North Carolina may adopt rules  
10 governing this procedure and may supervise its implementation and  
11 operation through the Administrative Office of the Courts. These  
12 rules shall ensure that no party is deprived of the right to jury  
13 trial and that any party dissatisfied with an arbitration award  
14 may have trial de novo.

15 (c) This procedure may be employed in civil actions where  
16 claims do not exceed ~~fifteen thousand dollars (\$15,000)~~ twenty-  
17 five thousand dollars (\$25,000).

18 (d) This procedure may be implemented in a judicial district,  
19 in selected counties within a district, or in any court within a  
20 district, if the Director of the Administrative Office of the  
21 Courts, and the cognizant Senior Resident Superior Court Judge or  
22 the Chief District Court Judge of any court selected for this  
23 procedure, determine that use of this procedure may assist in the  
24 administration of justice toward achieving objectives stated in  
25 subsection (a) of this section in a judicial district, county, or  
26 court. The Director of the Administrative Office of the Courts,  
27 acting upon the recommendation of the cognizant Senior Resident  
28 Superior Court Judge or Chief District Court Judge of any court  
29 selected for this procedure, may terminate this procedure in any  
30 judicial district, county, or court upon a determination that its  
31 use has not accomplished objectives stated in subsection (a) of  
32 this section.

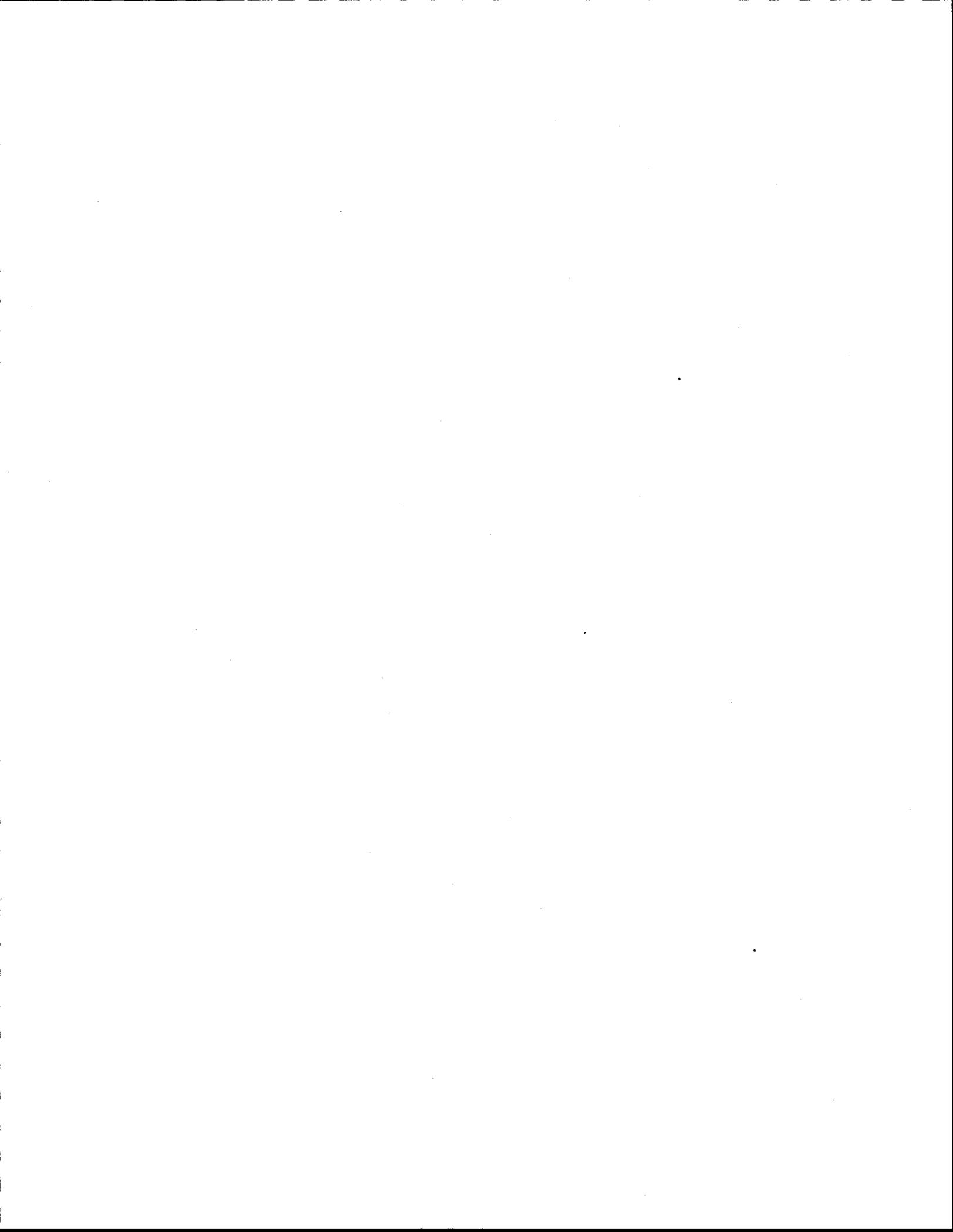
33 (e) Arbitrators in this procedure shall have the same immunity  
34 as judges from civil liability for their official conduct."

35 Sec. 4. This act becomes effective October 1, 1996, and  
36 applies to claims filed on or after that date.

## ANALYSIS OF PROPOSED LEGISLATION

This legislation would increase the amount in controversy for civil cases heard in district court from \$10,000 to \$25,000. It would also amend G.S. 1A-1, Rule 8(a), which provides for a nonspecific demand for relief in negligence actions and in any claim for punitive damages, to increase from \$10,000 to \$25,000 the amount above which a specific demand cannot be made. The legislation would also authorize increases in the amount in controversy from \$15,000 to \$25,000 for civil cases that may be subject to court-ordered arbitration.

The legislation would be effective on October 1, 1996, and would apply to claims filed on or after that date.







APPENDIX H

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-rgz-006

THIS IS A DRAFT 9-MAY-96 16:17:22

Short Title: Community Penalties/Record Checks. (Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW COMMUNITY PENALTIES PROGRAMS TO OBTAIN CRIMINAL  
3 RECORD CHECKS OF TARGETED OFFENDERS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. Chapter 7A of the General Statutes is amended  
6 by adding the following new section to read:  
7 "§ 7A-778. Criminal record checks of targeted offenders.  
8 (a) The Department of Justice may provide to the director of a  
9 local community penalties program established pursuant to G.S.  
10 7A-772(b) a criminal record check of a targeted offender. The  
11 community penalties program may use the information in preparing  
12 a community penalties plan for the offender and may present the  
13 information to the court for sentencing purposes, but the  
14 information itself shall not be made a part of any public court  
15 record.  
16 (b) The Department of Justice shall charge a reasonable fee for  
17 conducting a criminal record check under this section. The fee  
18 shall not exceed the actual cost of locating, editing,  
19 researching, and retrieving the information. The fee shall be

1 paid by the offender as a condition of probation if the  
2 offender's community penalties plan is approved by the court."

3       Sec. 2. This act becomes effective December 1, 1996.

## ANALYSIS OF PROPOSED LEGISLATION

Local community penalties programs prepare community penalty plans to be used by a judge as an alternative to incarceration. However, the local programs do not have access to Federal Bureau of Investigation (FBI) record checks to determine prior records of defendants. Under federal law, only law enforcement agencies or groups authorized by State statute may have access to such record checks.

The proposed legislation would add a new G.S. 7A-778 to authorize directors of local community penalties programs to receive criminal record checks. The Department of Justice, through the FBI, would provide the checks. The bill authorizes the Department to charge a reasonable fee for conducting the check.







APPENDIX I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H/S

D

House/Senate 96-RSZ-006.1, mlm  
THIS IS A DRAFT 9-MAY-96 16:07:21

Short Title: Waiver of Recording/Dist. Ct. (Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT A CIVIL TRIAL IN DISTRICT COURT WILL NOT  
3 BE REPORTED UNLESS A PARTY REQUESTS REPORTING IN WRITING OR THE  
4 COURT ORDERS REPORTING.  
5 The General Assembly of North Carolina enacts:  
6           Section 1. G.S. 7A-198(d) reads as rewritten:  
7           (d) Reporting of any trial ~~may be waived by consent of the~~  
8 ~~parties.~~ is waived unless a party requests reporting in writing.  
9 Except as otherwise provided in subsection (e), a trial shall be  
10 reported if a party requests reporting in writing or if the  
11 court, in its discretion, orders that the trial be reported.  
12           Sec. 2. This act becomes effective October 1, 1996.

## ANALYSIS OF PROPOSED LEGISLATION

This legislation would amend G.S. 7A-198(d) to provide that, except as provided in subsection (e), a civil trial in district court will not be reported unless a party requests in writing that it be reported or the court, in its discretion, orders that it be reported. Subsection (e) provides that trials before magistrates and hearings to adjudicate and dispose of infractions will not be reported.

The legislation would be effective on October 1, 1996.

APPENDIX J

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RGZ-003

THIS IS A DRAFT 9-MAY-96 15:44:22

Short Title: Clerks/Year's Allowance.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSE'S AND CHILDREN'S  
3 YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE.  
4 The General Assembly of North Carolina enacts:  
5                   Section 1. G.S. 30-16 reads as rewritten:  
6 "§30-16. Duty of personal representative or magistrate to assign  
7 allowance.  
8 It shall be the duty of every administrator, collector, or  
9 executor of a will, on application in writing, signed by the  
10 surviving spouse, at any time within one year after the death of  
11 the deceased spouse, to assign to the surviving spouse the year's  
12 allowance as provided in this Article.  
13 If there shall be no administration, or if the personal  
14 representative shall fail or refuse to apply to a ~~magistrate,~~  
15 magistrate or clerk of court, as provided in G.S. 30-20, for 10  
16 days after the surviving spouse has filed the aforesaid  
17 application, or if the surviving spouse is the personal  
18 representative, the surviving spouse may make application to the  
19 ~~magistrate,~~ magistrate or clerk, and it shall be the duty of the  
20 magistrate or clerk to proceed in the same manner as though the  
21 application had been made by the personal representative.

1 Where any personal property of the deceased spouse shall be  
2 located outside the township or county where the deceased spouse  
3 resided at the time of his death, the personal representative or  
4 the surviving spouse may apply to any magistrate or to any clerk  
5 of court of any township or county where such personal property  
6 is located, and it shall be the duty of such magistrate or clerk  
7 to assign the year's allowance as if the deceased spouse had  
8 resided and died in that township."

9 Sec. 2. G.S. 30-17 reads as rewritten:

10 "§ 30-17. When children entitled to an allowance.

11 Whenever any parent dies leaving any child under the age of 18  
12 years, including an adopted child or a child with whom the widow  
13 may be pregnant at the death of her husband, or a child who is  
14 less than 22 years of age and is a full-time student in any  
15 educational institution, or a child under 21 years of age who has  
16 been declared mentally incompetent, or a child under 21 years of  
17 age who is totally disabled, or any other person under the age of  
18 18 years residing with the deceased parent at the time of death  
19 to whom the deceased parent or the surviving parent stood in loco  
20 parentis, every such child shall be entitled, besides its share  
21 of the estate of such deceased parent, to an allowance of two  
22 thousand dollars (\$2,000) for its support for the year next  
23 ensuing the death of such parent, less, however, the value of any  
24 articles consumed by said child since the death of said parent.  
25 Such allowance shall be exempt from any lien by judgment or  
26 execution against the property of such parent. The personal  
27 representative of the deceased parent, within one year after the  
28 parent's death, shall assign to every such child the allowance  
29 herein provided for; but if there is no personal representative  
30 or if he fails or refuses to act within 10 days after written  
31 request by a guardian or next friend on behalf of such child, the  
32 allowance may be assigned by a ~~magistrate~~, magistrate or clerk of  
33 court upon application of said guardian or next friend.

34 If the child resides with the widow of the deceased parent at  
35 the time such allowance is paid, the allowance shall be paid to  
36 said widow for the benefit of said child. If the child resides  
37 with its surviving parent who is other than the widow of the  
38 deceased parent, such allowance shall be paid to said surviving  
39 parent for the use and benefit of such child, regardless of  
40 whether the deceased died testate or intestate or whether the

1 widow dissented from the will. Provided, however, the allowance  
2 shall not be available to an illegitimate child of a deceased  
3 father, unless such deceased father shall have recognized the  
4 paternity of such illegitimate child by deed, will or other  
5 paper-writing. If the child does not reside with a parent when  
6 the allowance is paid, it shall be paid to its general guardian,  
7 if any, and if none, to the clerk of the superior court who shall  
8 receive and disburse same for the benefit of such child.

9           Sec. 3. Part 2 of Article 4 of Chapter 30 of the General  
10 Statutes reads as rewritten:

11

12           "Part 2. Assigned by ~~Magistrate~~ Magistrate or Clerk.

13

14 "§ 30-19. Value of property ascertained.

15       The value of the personal property assigned to the surviving  
16 spouse and children shall be ascertained by a magistrate or the  
17 clerk of court of the county in which administration was granted  
18 or the will probated.

19 "§ 30-20. Procedure for assignment.

20       Upon the application of the surviving spouse, a child by his  
21 guardian or next friend, or the personal representative of the  
22 deceased, the clerk of superior court of the county in which the  
23 deceased resided ~~shall~~ may assign the inquiry to a magistrate of  
24 the county. The magistrate or clerk of court shall shall, upon  
25 assignment, ascertain the person or persons entitled to an  
26 allowance according to the provisions of this Article, and  
27 determine the money or other personal property of the estate, and  
28 pay over to or assign to the surviving spouse and to the  
29 children, if any, so much thereof as they shall be entitled to as  
30 provided in this Article. Any deficiencies shall be made up from  
31 any of the personal property of the deceased, and if the personal  
32 property of the estate shall be insufficient to satisfy such  
33 allowance, the clerk of the superior court shall enter judgment  
34 against the personal representative for the amount of such  
35 deficiency, to be paid when a sufficiency of such assets shall  
36 come into his hands.

37 "§ 30-21. Report of magistrate.

38       The magistrate or clerk of court shall shall, upon assignment,  
39 make and sign three lists of the money or other personal property  
40 assigned to each person, stating their quantity and value, and

1 the deficiency to be paid by the personal representative. Where  
2 the allowance is to the surviving spouse, one of these lists  
3 shall be delivered to him. Where the allowance is to a child, one  
4 of these lists shall be delivered to the surviving parent with  
5 whom the child is living; or to the child's guardian or next  
6 friend if the child is not living with said surviving parent; or  
7 to the child if said child is not living with the surviving  
8 parent and has no guardian or next friend. One list shall be  
9 delivered to the personal representative. One list shall be  
10 returned by the ~~magistrate~~, magistrate or clerk, within 20 days  
11 after the assignment, to the superior court of the county in  
12 which administration was granted or the will probated, and the  
13 clerk shall file and record the same, together with any judgment  
14 entered pursuant to G.S. 30-20.

15 "§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.

16 "§ 30-23. Right of appeal.

17 The personal representative, or the surviving spouse, or child  
18 by his guardian or next friend, or any creditor, legatee or heir  
19 of the deceased, may appeal from the finding of the magistrate or  
20 clerk of court to the superior court of the county, and, within  
21 10 days after the assignment, cite the adverse party to appear  
22 before such court on a certain day, not less than five nor  
23 exceeding 10 days after the service of the citation.

24 "§ 30-24. Hearing on appeal.

25 At or before the day named, the appellant shall file with the  
26 clerk a copy of the assignment and a statement of his exceptions  
27 thereto, and the issues thereby raised shall be decided ~~as other~~  
28 ~~issues are directed to be~~ de novo. ~~When the issues shall have~~  
29 ~~been decided, judgment shall be entered accordingly, if it may be~~  
30 ~~without injustice, without remitting the proceedings to the~~  
31 ~~magistrate.~~

32 "§ 30-25. Personal representative entitled to credit.

33 Upon the settlement of the accounts of the personal  
34 representative, he shall be credited with the articles assigned,  
35 and the value of the deficiency assessed as aforesaid, if the  
36 same shall have been paid, unless the allowance be impeached for  
37 fraud or gross negligence in him.

38 "§ 30-26. When above allowance is in full.

39 If the estate of a deceased be insolvent, or if his personal  
40 estate does not exceed ten thousand dollars (\$10,000), the

1 allowances for the year's support of the surviving spouse and the  
2 children shall not, in any case, exceed the value prescribed in  
3 G.S. 30-15 and [G.S.] 30-17; and the allowances made to them as  
4 above prescribed shall preclude them from any further  
5 allowances."

6 Sec. 4. G.S. 7A-307(b1) reads as rewritten:

7 (b1) The clerk shall assess the following miscellaneous fees:

- 8 (1) Filing and indexing a will with no probate
- 9 -- first page..... \$ 1.00
- 10 -- each additional page or fraction thereof. .25
- 11 (2) Issuing letters to fiduciaries, per letter over
- 12 five
- 13 letters issued..... 1.00
- 14 (3) Inventory of safe deposits of a decedent, per box,
- 15 per day 15.00
- 16 (4) Taking a deposition..... 5.00
- 17 (5) Docketing and indexing a will probated in another
- 18 county in the State
- 19 -- first page..... 1.00
- 20 -- each additional page or fraction thereof. .25
- 21 (6) Hearing petition for year's allowance to surviving
- 22 spouse or child, in cases not assigned to a
- 23 magistrate, and allotting the same..... 4.00

24 Sec. 5. This act becomes effective October 1, 1996, and  
25 applies to applications for year's allowances filed on or after  
26 that date.

27  
28

## ANALYSIS OF PROPOSED LEGISLATION

Article 4 of Chapter 30 governs the year's allowance given to the surviving spouse and children of an intestate or testator. A year's allowance is an amount (\$10,000 for a spouse, \$2,000 for a child) given from the personal property of the deceased to the deceased's spouse or children for their support. The allowance is exempt from any lien against the deceased's property.

Under current law, application is made to a magistrate to approve the year's allowance. The proposed legislation would amend Article 4 of Chapter 30 to allow a clerk, in addition to a magistrate, to approve a year's allowance. In many cases, the clerk actually performs the work on the application and is the proper person to approve the year's allowance. The bill authorizes the clerk to assess a fee of \$4.00 for hearing the application, which is the same fee charged by a magistrate under the current law.

APPENDIX K

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RGZ-005

THIS IS A DRAFT 9-MAY-96 15:43:35

Short Title: Eliminate Certified Notice.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN  
3 BOND FORFEITURE CASES.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. G.S. 15A-544(b) reads as rewritten:  
6       "(b) If the principal does not comply with the conditions of  
7 the bail bond, the court having jurisdiction must enter an order  
8 declaring the bail to be forfeited. If forfeiture is ordered by  
9 the court, a copy of the order of forfeiture and notice that  
10 judgment will be entered upon the order after 60 days must be  
11 served on each obligor. Service is to be made by the clerk  
12 mailing by ~~certified mail, return receipt requested,~~ first class  
13 mail a copy of the order of forfeiture and notice to each obligor  
14 at each obligor's address as noted on the bond and note on the  
15 original the date of mailing. Service is complete three days  
16 after the mailing."  
17           Sec. 2. This act is effective upon ratification.

## ANALYSIS OF PROPOSED LEGISLATION

Under changes made by the General Assembly during the 1995 Regular Session, an order of forfeiture of a bail bond must be served upon the defendant by certified mail, return receipt requested. Prior to the 1995 Session, service was attempted first by the sheriff, and if service was not obtained, the clerk mailed the order by regular mail. The legislature removed the requirement of attempted service by the sheriff and provided that service was to be made by certified mail.

The proposed legislation would delete the requirement of service by certified mail and allow service by first class mail. Service by certified mail often serves little purpose since the defendant has failed to appear in court and cannot be located.

APPENDIX L

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H/S

D

House/Senate 96-RSZ-007, mlm  
THIS IS A DRAFT 9-MAY-96 16:08:11

Short Title: Cert. Copies/Custody & Wills

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE FILING AND REGISTRY OF CERTIFIED COPIES  
3 OF OUT-OF-STATE CUSTODY DECREES AND FOR THE VALIDATION OF  
4 CERTIFIED COPIES OF WILLS RECORDED WITHOUT PROBATE.  
5 The General Assembly of North Carolina enacts:  
6                   Section 1. G.S. 50A-15 reads as rewritten:  
7 "§ 50A-15. Filing and enforcement of custody decree of another  
8 state.  
9   (a) An exemplified copy or a certified true copy of a custody  
10 decree of another state may be filed in the office of the clerk  
11 of any superior court of this State. The clerk shall treat the  
12 decree in the same manner as a custody decree of a court of this  
13 State. A custody decree so filed has the same effect and shall be  
14 enforced in like manner as a custody decree rendered by a court  
15 of this State.  
16   (b) A person violating a custody decree of another state which  
17 makes it necessary to enforce the decree in this State may be  
18 required to pay necessary travel and other expenses, including  
19 attorneys' fees, incurred by the party entitled to the custody or  
20 such party's witnesses."

1           Sec. 2. G.S. 50A-16 reads as rewritten:

2 "§ 50A-16. Registry of out-of-state custody decrees and  
3 proceedings.

4     The clerk of each superior court shall maintain a registry in  
5 which ~~he~~ the clerk shall enter the following:

6           (1) Exemplified and certified true copies of custody  
7           decrees of other states received for filing;

8           (2) Communications as to the pendency of custody  
9           proceedings in other states;

10          (3) Communications concerning a finding of inconvenient  
11          forum by a court of another state; and

12          (4) Other communications or documents concerning  
13          custody proceedings in another state which may  
14          affect the jurisdiction of a court of this State or  
15          the disposition to be made by it in a custody  
16          proceeding."

17           Sec. 3. G.S. 31-30 reads as rewritten:

18 "§31-30. Validation of wills recorded without probate by subscribing  
19           witnesses.

20     In all cases where wills and testaments were executed prior to the  
21 first day of January, 1875, and which appear as recorded in the record  
22 of last wills and testaments to have had two or more witnesses  
23 thereto, and such last wills and testaments were admitted to probate  
24 and recorded in the record of wills in the proper county in this State  
25 prior to the first day of January, 1888, without having been duly  
26 proven as provided by law, and such wills were presented to the clerk  
27 of the superior court in any county in this State where the makers of  
28 said wills owned property, and where the makers of such wills lived  
29 and died, and were by such clerks recorded in the record of wills for  
30 his county, said wills and testaments or exemplified copies or  
31 certified true copies thereof, so recorded, if otherwise sufficient,  
32 shall have the effect to pass the title to real or personal property,  
33 or both, therein devised and bequeathed, to the same extent and as  
34 completely as if the execution thereof had been duly proven by the two  
35 subscribing witnesses thereto in the manner provided by law of this  
36 State. Nothing herein shall be construed to prevent such wills from  
37 being impeached for fraud."

38           Sec. 4. This act becomes effective October 1, 1996.

## ANALYSIS OF PROPOSED LEGISLATION

This legislation would provide that certified true copies of certain documents will be treated the same as exemplified copies of those documents. First, it would amend G.S. 50A-15 and G.S. 50A-16 to allow a certified true copy of a decree of another state to be filed in a clerk of superior court's office and enforced as a custody decree of this state. Second, it would amend G.S. 31-30 to provide for validation of a certified true copy of a will recorded without probate.

This legislation would be effective on October 1, 1996.









1		<u>determined by the formula is less than ten dollars</u>	
2		<u>(\$10.00), a minimum ten dollar (\$10.00) fee will be</u>	
3		<u>collected. If the amount determined by the formula</u>	
4		<u>is more than two hundred dollars (\$200.00), a</u>	
5		<u>maximum two hundred dollar (\$200.00) fee will be</u>	
6		<u>collected.</u>	
7	(2)	Proceeding supplemental to execution	20.00
8	(3)	Confession of judgment	15.00
9	(4)	Taking a deposition	5.00
10	(5)	Execution	15.00
11	(6)	Notice of resumption of former name	5.00
12	(7)	Taking an acknowledgment or	
13		administering an oath, or both, with or	
14		without seal, each certificate (except	
15		that oaths of office shall be	
16		administered to public officials without	
17		charge)	1.00
18	(8)	Bond, taking justification or approving	
19	5.00		
20	(9)	Certificate, under seal	2.00
21	(10)	Exemplification of records	5.00
22	(11)	Recording or docketing (including	
23		indexing) any document	
24		-- first page	4.00
25		-- each additional page or fraction	
26		thereof	.25
27	(12)	Preparation of copies	
28		-- first page	1.00
29		-- each additional page or fraction	
30		thereof	.25
31	(13)	Preparation and docketing of transcript	
32		of judgment	5.00
33	(14)	Substitution of trustee in deed of trust	
34	5.00		
35	(15)	Execution of passport application -- the	
36		amount allowed by federal law	
37	(16)	Repealed by Session Laws 1989, c. 783,	
38		s. 2.	
39	(17)	Criminal record search except if search	
40		is requested by an agency of the State	

1 or any of its political subdivisions or  
2 by an agency of the United States or by  
3 a petitioner in a proceeding under  
4 Article 2 of General Statutes Chapter 20  
5 5.00  
6 (18) Filing the affirmations,  
7 acknowledgments, agreements and  
8 resulting orders entered into under the  
9 provisions of G.S. 110-132 and G.S.  
10 110-133 4.00  
11 (19) Repealed by Session Laws 1989, c. 783,  
12 s. 3."  
13 Sec. 2. This act becomes effective October 1, 1996.

## **ANALYSIS OF PROPOSED LEGISLATION**

This legislation would raise the filing fee for foreclosure under power of sale in deed of trust or mortgage from \$25 to \$30. It would also provide for a minimum \$10.00 fee for property sold under the power of sale.

The legislation would be effective on October 1, 1996.

APPENDIX N

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

96-RGZ-004

THIS IS A DRAFT 10-APR-96

Short Title: Clerks of Court on Commissions.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY  
3 ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND  
4 THE GOVERNOR'S CRIME COMMISSION.  
5 The General Assembly of North Carolina enacts:  
6           Section 1. G.S. 164-37 reads as rewritten:  
7 "§ 164-37. Membership; chairman; meetings; quorum.  
8 The Commission shall consist of ~~28~~ 29 members as follows:  
9           (1) The Chief Justice of the North Carolina Supreme  
10           Court shall appoint a sitting or former Justice or  
11           judge of the General Court of Justice, who shall  
12           serve as Chairman of the Commission;  
13           (2) The Chief Judge of the North Carolina Court of  
14           Appeals, or another judge on the Court of Appeals,  
15           serving as his designee;  
16           (3) The Secretary of Correction or his designee;  
17           (4) The Secretary of Crime Control and Public Safety or  
18           his designee;  
19           (5) The Chairman of the Parole Commission, or his  
20           designee;

- 1           (6) The President of the Conference of Superior Court  
2           Judges or his designee;
- 3           (7) The President of the District Court Judges  
4           Association or his designee;
- 5           (8) The President of the North Carolina Sheriff's  
6           Association or his designee;
- 7           (9) The President of the North Carolina Association of  
8           Chiefs of Police or his designee;
- 9           (10) One member of the public at large, who is not  
10           currently licensed to practice law in North  
11           Carolina, to be appointed by the Governor;
- 12           (11) One member to be appointed by the Lieutenant  
13           Governor;
- 14           (12) Three members of the House of Representatives, to  
15           be appointed by the Speaker of the House;
- 16           (13) Three members of the Senate, to be appointed by the  
17           President Pro Tempore of the Senate;
- 18           (14) The President Pro Tempore of the Senate shall  
19           appoint the representative of the North Carolina  
20           Community Sentencing Association that is  
21           recommended by the President of that organization;
- 22           (15) The Speaker of the House of Representatives shall  
23           appoint the member of the business community that  
24           is recommended by the President of the North  
25           Carolina Retail Merchants Association;
- 26           (16) The Chief Justice of the North Carolina Supreme  
27           Court shall appoint the criminal defense attorney  
28           that is recommended by the President of the North  
29           Carolina Academy of Trial Lawyers;
- 30           (17) The President of the Conference of District  
31           Attorneys or his designee;
- 32           (18) The Lieutenant Governor shall appoint the member of  
33           the North Carolina Victim Assistance Network that  
34           is recommended by the President of that  
35           organization;
- 36           (19) A rehabilitated former prison inmate, to be  
37           appointed by the Chairman of the Commission;
- 38           (20) The President of the North Carolina Association of  
39           County Commissioners or his designee;

- 1           (21) The Governor shall appoint the member of the  
2           academic community, with a background in criminal  
3           justice or corrections policy, that is recommended  
4           by the President of The University of North  
5           Carolina;
- 6           (22) The Attorney General, or a member of his staff, to  
7           be appointed by the Attorney General;
- 8           (23) The Governor shall appoint the member of the North  
9           Carolina Bar Association that is recommended by the  
10          President of that organization.
- 11          (24) A member of the Justice Fellowship Task Force, who  
12          is a resident of North Carolina, to be appointed by  
13          the Chairman of the Commission.
- 14          (25) The President of the Association of Clerks of  
15          Superior Court of North Carolina, or his designee.

16          The Commission shall have its initial meeting no later than  
17          September 1, 1990, at the call of the Chairman. The Commission  
18          shall meet a minimum of four regular meetings each year. The  
19          Commission may also hold special meetings at the call of the  
20          Chairman, or by any four members of the Commission, upon such  
21          notice and in such manner as may be fixed by the rules of the  
22          Commission. A majority of the members of the Commission shall  
23          constitute a quorum."

24          Sec. 2. G.S. 143B-273.6 reads as rewritten:  
25          "§ 143B-273.6. State Criminal Justice Partnership Advisory  
26          Board; members; terms; chairperson.

27          (a) There is created the State Criminal Justice Partnership  
28          Advisory Board. The State Board shall act as an advisory body to  
29          the Secretary with regards to this Article. The State Board  
30          shall consist of ~~21~~ 22 members as follows:

- 31               (1) A member of the Senate.  
32               (2) A member of the House of Representatives.  
33               (3) A judge of the Superior Court.  
34               (4) A judge of the district court.  
35               (5) A district attorney.  
36               (6) A criminal defense attorney.  
37               (7) A county sheriff.  
38               (8) A chief of a city police department.

- 1           (9) Two county commissioners, one from a predominantly  
2           urban county and one from a predominantly rural  
3           county.  
4           (10) A representative of an existing community-based  
5           corrections program.  
6           (11) A member of the public who has been the victim of a  
7           crime.  
8           (12) A rehabilitated ex-offender.  
9           (13) A member of the business community.  
10          (14) Three members of the general public, one of whom is  
11          a person recovering from chemical dependency or who  
12          is a previous consumer of substance abuse treatment  
13          services.  
14          (15) A victim service provider.  
15          (16) A member selected from each of the following  
16          service areas: mental health, substance abuse, and  
17          employment and training.  
18          (17) A clerk of superior court.  
19   (b) The membership of the State Board shall be selected as  
20 follows:  
21          (1) The Governor shall appoint the following members:  
22          the county sheriff, the chief of a city police  
23          department, the member of the public who has been  
24          the victim of a crime, a rehabilitated ex-offender,  
25          the members selected from each of the service  
26          areas.  
27          (2) The Lieutenant Governor shall appoint the following  
28          members: the member of the business community, one  
29          member of the general public who is a person  
30          recovering from chemical dependency or who is a  
31          previous consumer of substance abuse treatment  
32          services, the victim service provider.  
33          (3) The Chief Justice of the North Carolina Supreme  
34          Court shall appoint the following members: the  
35          superior court judge, the district court judge, the  
36          district attorney, the clerk of superior court, the  
37          criminal defense attorney, the representative of an  
38          existing community-based corrections program.  
39          (4) The President Pro Tempore of the Senate shall  
40          appoint the following members: the member of the

1 Senate, the county commissioner from a  
2 predominantly urban county, one member of the  
3 general public.

4 (5) The Speaker of the House shall appoint the  
5 following members: the member of the House of  
6 Representatives, the county commissioner from a  
7 predominantly rural county, one member of the  
8 general public.

9 In appointing the members of the State Board, the appointing  
10 authorities shall make every effort to ensure fair geographic  
11 representation of the State Board membership and that minority  
12 persons and women are fairly represented.

13 (c) The initial members shall serve staggered terms, one-third  
14 shall be appointed for a term of one year, one-third shall be  
15 appointed for a term of two years, and one-third shall be  
16 appointed for a term of three years. The members identified in  
17 subdivisions (1) through (7) of subsection (a) of this section  
18 shall be appointed initially for a term of one year. The members  
19 identified in subdivisions (8) through (13) in subsection (a) of  
20 this section shall be appointed initially for a term of two  
21 years. The members identified in subdivisions (14) through (16)  
22 of subsection (a) of this section shall each be appointed for a  
23 term of three years. The additional member identified in  
24 subdivision (17) in subsection (a) of this section shall be  
25 appointed initially for a term of three years.

26 At the end of their respective terms of office their successors  
27 shall be appointed for terms of three years. A vacancy occurring  
28 before the expiration of the term of office shall be filled in  
29 the same manner as original appointments for the remainder of the  
30 term. Members may be reappointed without limitation.

31 (d) Each appointing authority shall have the power to remove a  
32 member it appointed from the State Board for misfeasance,  
33 malfeasance, or nonfeasance.

34 (e) The members of the State Board shall, within 30 days after  
35 the last initial appointment is made, meet and elect one member  
36 as chairman and one member as vice-chairman.

37 (f) The State Board shall meet at least quarterly and may also  
38 hold special meetings at the call of the chairman. For purposes  
39 of transacting business, a majority of the membership shall  
40 constitute a quorum.

1 (g) Any member who has an interest in a governmental agency or  
2 unit or private nonprofit agency which is applying for a State-  
3 County Criminal Justice Partnership grant or which has received a  
4 grant and which is the subject of an inquiry or vote by a grant  
5 oversight committee, shall publicly disclose that interest on the  
6 record and shall take no part in discussion or have any vote in  
7 regard to any matter directly affecting that particular grant  
8 applicant or grantee. 'Interest' in a grant applicant or grantee  
9 shall mean a formal and direct connection to the entity,  
10 including, but not limited to, employment, partnership, serving  
11 as an elected official, board member, director, officer, or  
12 trustee, or being an immediate family member of someone who has  
13 such a connection to the grant applicant or grantee.

14 (h) The members of the State Board shall serve without  
15 compensation but shall be reimbursed for necessary travel and  
16 subsistence expenses."

17 Sec. 3. 143B-478 reads as rewritten:

18 § 143B-478. Governor's Crime Commission -- creation;  
19 composition; terms; meetings, etc.

20 (a) There is hereby created the Governor's Crime Commission of  
21 the Department of Crime Control and Public Safety. The  
22 Commission shall consist of 34 voting members and six nonvoting  
23 members. The composition of the Commission shall be as follows:

24 (1) The voting members shall be:

25 a. The Governor, the Chief Justice of the Supreme  
26 Court of North Carolina (or his alternate),  
27 the Attorney General, the Director of the  
28 Administrative Office of the Courts, the  
29 Secretary of the Department of Human  
30 Resources, the Secretary of the Department of  
31 Correction, and the Superintendent of Public  
32 Instruction;

33 b. A judge of superior court, a judge of district  
34 court specializing in juvenile matters, a  
35 chief district court judge, a clerk of  
36 superior court, and a district attorney;

37 c. A defense attorney, three sheriffs (one of  
38 whom shall be from a "high crime area"), three  
39 police executives (one of whom shall be from a  
40 "high crime area"), six citizens (two with

1 knowledge of juvenile delinquency and the  
2 public school system, two of whom shall be  
3 under the age of 21 at the time of their  
4 appointment, one representative of a "private  
5 juvenile delinquency program," and one in the  
6 discretion of the Governor), three county  
7 commissioners or county officials, and three  
8 mayors or municipal officials;

9 d. Two members of the North Carolina House of  
10 Representatives and two members of the North  
11 Carolina Senate.

12 (2) The nonvoting members shall be the Director of the  
13 State Bureau of Investigation, the Secretary of the  
14 Department of Crime Control and Public Safety, the  
15 Director of the Division of Youth Services of the  
16 Department of Human Resources, the Administrator  
17 for Juvenile Services of the Administrative Office  
18 of the Courts, the Director of the Division of  
19 Prisons and the Director of the Division of Adult  
20 Probation and Paroles.

21 (b) The membership of the Commission shall be selected as  
22 follows:

23 (1) The following members shall serve by virtue of  
24 their office: the Governor, the Chief Justice of  
25 the Supreme Court, the Attorney General, the  
26 Director of the Administrative Office of the  
27 Courts, the Secretary of the Department of Human  
28 Resources, the Secretary of the Department of  
29 Correction, the Director of the State Bureau of  
30 Investigation, the Secretary of the Department of  
31 Crime Control and Public Safety, the Director of  
32 the Division of Prisons, the Director of the  
33 Division of Adult Probation and Paroles, the  
34 Director of the Division of Youth Services, the  
35 Administrator for Juvenile Services of the  
36 Administrative Office of the Courts, and the  
37 Superintendent of Public Instruction. Should the  
38 Chief Justice of the Supreme Court choose not to  
39 serve, his alternate shall be selected by the  
40 Governor from a list submitted by the Chief Justice

- 1 which list must contain no less than three nominees  
2 from the membership of the Supreme Court.
- 3 (2) The following members shall be appointed by the  
4 Governor: the district attorney, the defense  
5 attorney, the three sheriffs, the three police  
6 executives, the six citizens, the three county  
7 commissioners or county officials, the three mayors  
8 or municipal officials.
- 9 (3) The following members shall be appointed by the  
10 Governor from a list submitted by the Chief Justice  
11 of the Supreme Court, which list shall contain no  
12 less than three nominees for each position and  
13 which list must be submitted within 30 days after  
14 the occurrence of any vacancy in the judicial  
15 membership: the judge of superior court, the clerk  
16 of superior court, the judge of district court  
17 specializing in juvenile matters, and the chief  
18 district court judge.
- 19 (4) The two members of the House of Representatives  
20 provided by subdivision (a)(1)d. of this section  
21 shall be appointed by the Speaker of the House of  
22 Representatives and the two members of the Senate  
23 provided by subdivision (a)(1)d. of this section  
24 shall be appointed by the President Pro Tempore of  
25 the Senate. These members shall perform the  
26 advisory review of the State plan for the General  
27 Assembly as permitted by section 206 of the Crime  
28 Control Act of 1976 (Public Law 94-503).
- 29 (5) The Governor may serve as chairman, designating a  
30 vice- chairman to serve at his pleasure, or he may  
31 designate a chairman and vice-chairman both of whom  
32 shall serve at his pleasure.
- 33 (c) The initial members of the Commission shall be those  
34 appointed pursuant to subsection (b) above, which appointments  
35 shall be made by March 1, 1977. The terms of the present members  
36 of the Governor's Commission on Law and Order shall expire on  
37 February 28, 1977. Effective March 1, 1977, the Governor shall  
38 appoint members, other than those serving by virtue of their  
39 office, to serve staggered terms; seven shall be appointed for  
40 one-year terms, seven for two-year terms, and seven for

1 three-year terms. At the end of their respective terms of office  
2 their successors shall be appointed for terms of three years and  
3 until their successors are appointed and qualified. The  
4 Commission members from the House and Senate shall serve two-year  
5 terms effective March 1, of each odd-numbered year; and they  
6 shall not be disqualified from Commission membership because of  
7 failure to seek or attain reelection to the General Assembly, but  
8 resignation or removal from office as a member of the General  
9 Assembly shall constitute resignation or removal from the  
10 Commission. Any other Commission member no longer serving in the  
11 office from which he qualified for appointment shall be  
12 disqualified from membership on the Commission. Any appointment  
13 to fill a vacancy on the Commission created by the resignation,  
14 dismissal, death, disability, or disqualification of a member  
15 shall be for the balance of the unexpired term.

16 (d) The Governor shall have the power to remove any member  
17 from the Commission for misfeasance, malfeasance or nonfeasance.

18 (e) The Commission shall meet quarterly and at other times at  
19 the call of the chairman or upon written request of at least  
20 eight of the members. A majority of the voting members shall  
21 constitute a quorum for the transaction of business.

22 Sec. 4. This act is effective upon ratification.

## **ANALYSIS OF PROPOSED LEGISLATION**

The proposed legislation would amend the authorizing legislation for the Sentencing and Policy Advisory Commission, the Criminal Justice Advisory Board, and the Governor's Crime Commission to add to the membership of each Commission a representative of the clerks of court.

APPENDIX O

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-rgz-007

THIS IS A DRAFT 9-MAY-96 16:19:05

Short Title: Appeal Bond Changes.

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THAT APPEAL BONDS ARE POSTED WITH THE CLERK OF  
3 THE APPELLATE COURT IN CONFORMANCE WITH THE NORTH CAROLINA  
4 RULES OF APPELLATE PROCEDURE AND TO CLARIFY THAT THE  
5 UNDERTAKING ON APPEAL MUST BE IN WRITING.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 1-285 reads as rewritten:  
8 "§1-285. Undertaking on appeal.  
9 (a) To render an appeal effectual for any purpose in a civil  
10 cause or special proceeding, a written undertaking must be  
11 executed on the part of the appellant, with good and sufficient  
12 surety, in the sum of two hundred fifty dollars (\$250.00), or any  
13 lesser sum as might be adjudged by the court, to the effect that  
14 the appellant will pay all costs awarded against him on the  
15 appeal, and this undertaking must be filed with the clerk by whom  
16 the judgment or order was entered; or such sum must be deposited  
17 with the appropriate clerk by whom the judgment or order was  
18 entered, to abide the event of the appeal. of the appellate  
19 division in compliance with the North Carolina Rules of Appellate  
20 Procedure.

1 (b) The provisions of this section do not apply to the State of  
2 North Carolina, a city or a county or a local board of education,  
3 an officer thereof in his official capacity, or an agency  
4 thereof."

5 Sec. 2. G.S. 1-286 reads as rewritten:

6 "§1-286. Justification of sureties.

7 The written undertaking on appeal must be accompanied by the  
8 affidavit of one of the sureties that he is worth double the  
9 amount specified therein. The respondent may except to the  
10 sufficiency of the sureties within ten days after the notice of  
11 appeal; and unless they or other sureties justify within the ten  
12 days thereafter, the appeal shall be regarded as if no  
13 undertaking had been given. The justification must be upon a  
14 notice of not less than five days."

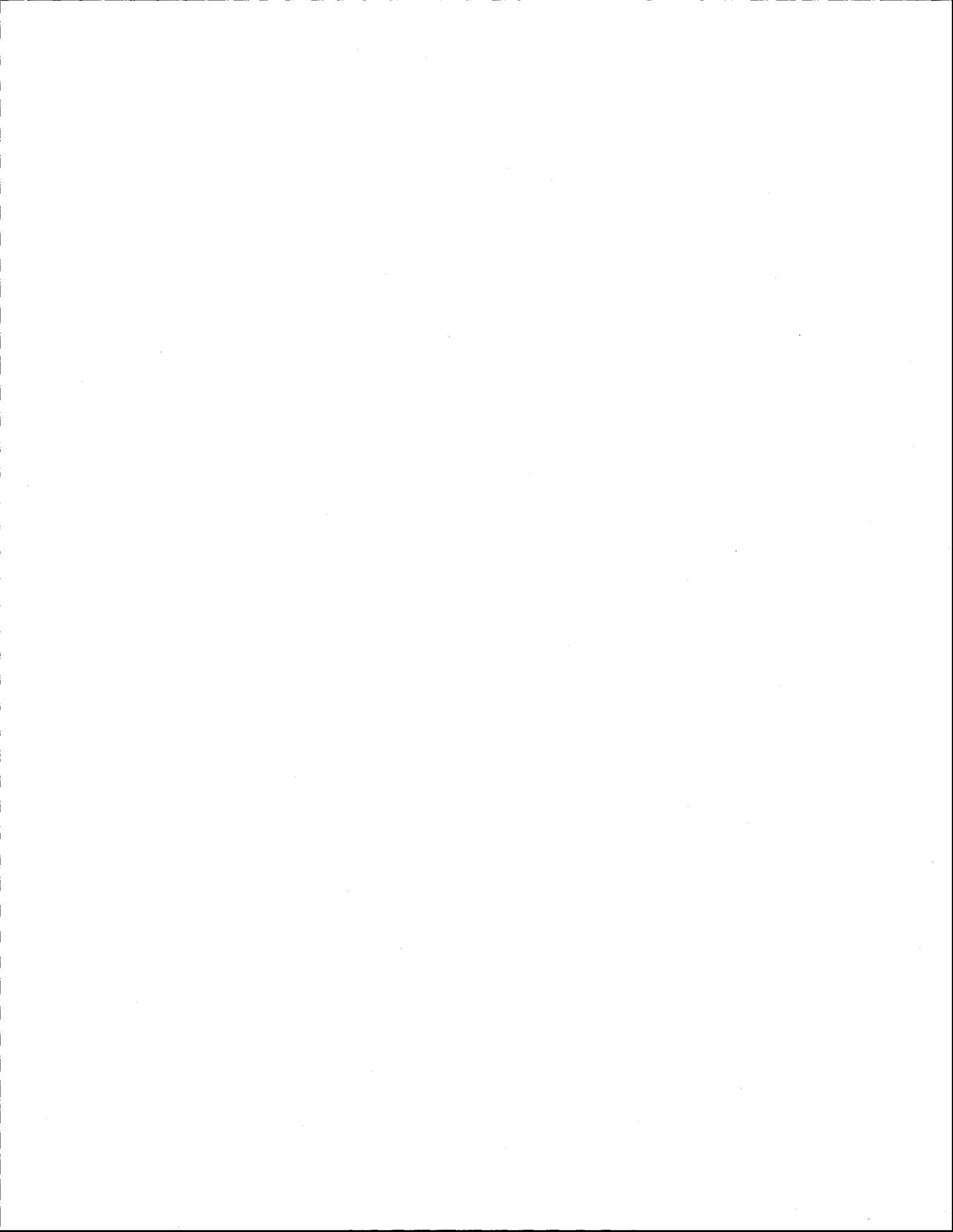
15 Sec. 3. This act is effective upon ratification.

## ANALYSIS OF PROPOSED LEGISLATION

Rule 6 of the Rules of Appellate Procedure provides that when appealing from a civil judgment or special proceeding, the appellant must post cash bond with the clerk of the appellate court when filing the record on appeal. However, G.S. 1-285 provides that cash bonds are posted with the clerk of superior court. Under the statute, the clerk of superior court then certifies that the bond was posted.

The proposed legislation conforms G.S. 1-285 to Rule 6 of the Rules of Appellate Procedure. The bill provides that cash bonds are posted with the appellate clerk, not the clerk of superior court.

The proposed legislation also amends G.S. 1-286 to clarify that the surety bond must be in writing.







APPENDIX P

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-rgz-008

THIS IS A DRAFT 9-MAY-96 15:42:50

Short Title: Child Support Lien.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CORRECTIONS TO THE STATUTES ESTABLISHING LIENS ON  
3 INSURANCE PROCEEDS TO SECURE CHILD SUPPORT.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. Chapter 44 of the General Statutes is amended  
6 by adding a new Article 8A entitled "Liens upon Insurance  
7 Proceeds to Secure Child Support."  
8           Sec. 2. G.S. 44-49.1 is recodified as G.S. 44-48.1 in  
9 Article 8A of Chapter 44 of the General Statutes.  
10          Sec. 3. G.S. 44-48.1, as recodified by this act, reads  
11 as rewritten:  
12 "§ 44-48.1. (Effective July 1, 1996) Lien created for payment of  
13 past-due child support obligations.  
14    (a) In the event that the Department of Human Resources or any  
15 other obligee, as defined in G.S. 110-129, provides written  
16 notification to an insurance company authorized to issue policies  
17 of insurance pursuant to ~~this~~ Chapter 58, except for accident and  
18 health insurance as defined in G.S. 58-7-15(3), that a claimant  
19 or beneficiary under a contract of insurance owes past-due child  
20 support and accompanies this information with a certified copy of

1 the court order ordering support together with proof that the  
2 claimant or beneficiary is past due in meeting this obligation,  
3 there is created a lien upon any insurance proceeds in favor of  
4 the Department or obligee. This section shall apply only in those  
5 instances in which there is a nonrecurring payment of a lump-sum  
6 amount equal to or in excess of three thousand dollars (\$3,000)  
7 or periodic payments with an aggregate amount that equals or  
8 exceeds three thousand dollars (\$3,000).

9 (b) As used in this section, accident and health insurance does  
10 not include disability income insurance, but does include  
11 hospital, medical, or dental service corporation coverage and  
12 health maintenance organization coverage."

13 Sec. 4. G.S. 44-50 reads as rewritten:

14 "\$ 44-50. Receiving person charged with duty of retaining funds  
15 for purpose stated; evidence; attorney's fees; charges.

16 (a) Such a lien as provided for in G.S. 44-49 or ~~G.S. 44-49.1~~  
17 G.S. 44-48.1 shall also attach upon all funds paid to any person  
18 in compensation for or settlement of the said injuries, whether  
19 in litigation or otherwise; and it shall be the duty of any  
20 person receiving the same before disbursement thereof to retain  
21 out of any recovery or any compensation so received a sufficient  
22 amount to pay the just and bona fide claims for such drugs,  
23 medical supplies, ambulance service and medical attention and/or  
24 hospital service, after having received and accepted notice  
25 thereof: Provided, that evidence as to the amount of such charges  
26 shall be competent in the trial of any such action: Provided,  
27 further, that nothing herein contained shall be construed so as  
28 to interfere with any amount due for attorney's services:  
29 Provided, further, that the lien hereinbefore provided for in  
30 G.S. 44-49 shall in no case, exclusive of attorneys' fees, exceed  
31 fifty percent (50%) of the amount of damages recovered.

32 (b) A lien as provided for in G.S. 44-48.1 shall be subordinate  
33 to a lien provided for in G.S. 44-49."

34 Sec. 5. This act becomes effective July 1, 1996.  
35

## ANALYSIS OF PROPOSED LEGISLATION

The proposed legislation makes changes to G.S. 44-49.1, Lien created for payment of past-due child support obligations. This statute, effective July 1, 1996, places a lien upon insurance proceeds for payment of past due child support obligations of the beneficiary. The bill recodifies the statute in a new Article 8A of Chapter 44, Liens upon Insurance Proceeds to Secure Child Support. The bill clarifies that the lien applies to insurance contracts issued under Chapter 58 of the General Statutes. It also excludes accident and health insurance, as defined in G.S. 58-7-15(3), from the lien provisions. Disability income insurance would be subject to the lien, however. Section 4 of the bill amends G.S. 44-50 to provide that the child support lien would be subordinate to a medical providers lien on funds paid for compensation of personal injuries.







APPENDIX Q

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

D

Senate/House, 96-RSZ-008, mlm  
THIS IS A DRAFT 14-MAY-96 16:26:18

Short Title: Courts Commission Membership

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA  
3 COURTS COMMISSION.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. G.S. 7A-506 reads as rewritten:  
6 "§ 7A-506. Creation; members; terms; qualifications; vacancies.  
7       (a)     The North Carolina Courts Commission is created.  
8 Effective July 1, 1993, it shall consist of 24 28 members, ~~six~~  
9 seven to be appointed by the Governor, ~~six~~ seven to be appointed  
10 by the Speaker of the House of Representatives, ~~six~~ seven to be  
11 appointed by the President Pro Tempore of the Senate, and ~~six~~  
12 seven to be appointed by the Chief Justice of the Supreme Court.  
13       (b)     Of the appointees of the Chief Justice of the Supreme  
14 Court, one shall be a Justice of the Supreme Court, one shall be  
15 a Judge of the Court of Appeals, two shall be judges of superior  
16 court, and two shall be district court judges- judges, and one  
17 shall be a public member who is not an attorney and who is not an  
18 officer or employee of the Judicial Department.  
19       (c)     Of the ~~six~~ seven appointees of the Governor, one shall be  
20 a district attorney, one shall be a practicing attorney, one

1 shall be a clerk of superior court, at least three shall be  
2 members of the General Assembly, ~~and~~ at least ~~one~~ two shall not  
3 be ~~an attorney-~~ attorneys, and of the non-attorneys, one shall be  
4 a public member who is not an officer or employee of the Judicial  
5 Department.

6 (d) Of the ~~six~~ seven appointees of the Speaker of the House,  
7 at least three shall be practicing attorneys, at least three  
8 shall be members of the General Assembly, ~~and~~ at least ~~one~~ two  
9 shall not be ~~an attorney-~~ attorneys, and of the non-attorneys,  
10 one shall be a public member who is not an officer or employee of  
11 the Judicial Department.

12 (e) Of the ~~six~~ seven appointees of the President Pro Tempore  
13 of the Senate, at least three shall be practicing attorneys, at  
14 least three shall be members of the General Assembly, ~~and~~ at  
15 least one shall be a ~~magistrate-~~ magistrate, and one shall be a  
16 public member who is not an attorney and who is not an officer or  
17 employee of the Judicial Department.

18 (f) Of the initial appointments of each appointing authority,  
19 three shall be appointed for four-year terms to begin July 1,  
20 1993, and three shall be appointed for two-year terms to begin  
21 July 1, 1993. The two public members appointed by the Governor  
22 and the Speaker of the House shall be appointed for four-year  
23 terms to begin July 1, 1997. The two public members appointed by  
24 the Chief Justice and the President Pro Tempore of the Senate  
25 shall be appointed for two-year terms to begin July 1, 1997.  
26 Successors shall be appointed for four-year terms.

27 (g) A vacancy in membership shall be filled for the remainder  
28 of the unexpired term by the appointing authority who made the  
29 original appointment. A member whose term expires may be  
30 reappointed."

31 Sec. 2. G.S. 7A-507 reads as rewritten:

32 "§7A-507. Ex officio members.

33 The following additional members shall serve ex officio: the  
34 Administrative Officer of the Courts; a representative of the N.  
35 C. State Bar appointed by the Council thereof; and a  
36 representative of the N. C. Bar Association appointed by the  
37 Board of Governors thereof. ~~Ex officio members have no vote. The~~  
38 Administrative Officer of the Courts has no vote."

39 Sec. 3. This act is effective upon ratification.

## ANALYSIS OF PROPOSED LEGISLATION

This legislation adds four public, voting members to the Courts Commission, one person to be appointed by each of the following: the Chief Justice, the Governor, the Speaker of the House, and the President Pro Tempore of the Senate. The terms would be staggered. In addition, the legislation provides that the representatives on the Courts Commission from the N.C. State Bar and the N.C. Bar Association will become voting members.





